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SLAVERY AND THE CATHOLIC CHURCH

THE HISTORY OF CATHOLIC TEACHING CONCERNING THE MORAL LEGITIMACY OF THE INSTITUTION OF SLAVERY

JOHN FRANCIS MAXWELL

Foreword by

THE RIGHT HON. LORD WILBERFORCE, C.M.G., O.B.E.
Lord of Appeal in Ordinary

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FOREWORD

This little volume which gives the essence of the story concerning the Catholic Church and the institution of slavery is complete in itself and, while being well researched, is more readable than a massive documentary history.

The fact is that the history of Catholic teaching concerning the moral legitimacy of slavery is not simple and straightforward. The Church's attitudes to slavery have been so widely misrepresented and misunderstood that "this private investigation" as the author calls it is not only of absorbing interest and valuable in itself but also important as a witness to the truth.

This Society is therefore glad to sponsor this publication, believing it to be an achievement in the anti-slavery cause and a worthwhile contribution to the Society's interests.

Joint-President, WILBERFORCE

Anti-Slavery Society for the Protection of Human Rights,
London
March 1974

AUTHOR'S PREFACE

Due acknowledgement is gratefully made to the Anti-Slavery Society, London, for its assistance in allowing this small book to see the light of day. The original intention had been to prepare a collection of documents with short commentaries, something along the lines of the work of S. Z. Ehler and J. B. Morrall *Church and State through the Centuries* (London, 1954). For the situation is that no adequate documentary study exists to illustrate the history of Catholic teaching in the Western Church concerning the moral legitimacy of the institution of slavery. Historical studies on particular moral problems can provide source-material for general histories of Catholic moral theology; it is no doubt regrettably true that because of the lack of such specialized historical studies in the past, no detailed full-scale history of the whole field of Catholic moral theology has yet been written.

However, the preparation of a full documentary history in this particular field is beyond the limited capabilities of the collector and translator of these documents. Further research is needed especially of Portuguese and Italian sources; and if the archives of the Holy Office (now the Sacred Congregation for the Doctrine of the Faith) could be placed at the disposal of competent investigators, this would be likely to provide a rich store of theological source-material. The author disclaims any expert knowledge of ecclesiastical history; and the provision of an adequate historical background in proper perspective for some of the documents is something which would demand the willing collaboration of an ecclesiastical and a social historian. So the author apologizes in advance that this is a mere interim report after a private investigation into the history of the common Catholic teaching in this particular area. This interim report indicates that future expert investigation is called for. As a preliminary summary presentation of the case it presupposes in the reader a minimal knowledge of the history of Western Europe.

The author wishes to record his thanks to the Most Reverend

Cyril C. Cowderoy, Roman Catholic Archbishop of Southwark, who released him from parochial duties between 1966 and 1973 and enabled him to do full-time research.

Grateful acknowledgement is made to the late Thomas J. P. Walsh, whose unpublished posthumous documentary work, "The Popes and Slavery" was examined between September and December, 1969, through the kindness of the Rev. David Woodard, M.A.

Finally, a word of appreciation is due to the staff of the Reading Room of the British Museum (now the British Library) and to the staff of the *Biblioteca Nacional*, Madrid, for their assistance.

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SLAVERY AND THE CATHOLIC CHURCH

Since the sixth century and right up until the twentieth century it has been common Catholic teaching that the social, economic and legal institution of slavery is morally legitimate provided that the master's title of ownership is valid and provided that the slave is properly looked after and cared for, both materially and spiritually. This institution of genuine slavery, whereby one human being is legally owned by another, and is forced to work for the exclusive benefit of his owner in return for food, clothing and shelter, and may be bought, sold, donated or exchanged, was not merely tolerated but was commonly approved of in the Western Latin Church for over 1400 years.

Since the early beginnings (in the eighteenth century) of the modern anti-slavery movement, a few Catholic historians have done their best to whitewash the past history of this common teaching of the Popes, Councils, Church Fathers, Bishops, canonists and moralists on slavery. They have done so with the well-intentioned motive of defending the good name of the Catholic Church. There have been a number of errors included in this common teaching – uncritical reliance on the legal titles of slave-ownership in Roman law as if they were principles of reason and justice; misunderstanding of the application of the natural moral law to slavery; neglect by recent moralists of a criterion of morality, namely the natural and necessary effects of actions or omissions; defective scholastic metaphysical analysis of the nature of slave-ownership; neglect of the importance of changes in the circumstances of the institution of slavery since the time of the Apostles; and finally, fundamentalist misinterpretation of texts of Holy Scripture; and there was evidently some fear that publicizing these errors would do more harm than good.

Today there is a more mature attitude. Outside the Catholic Church there is better appreciation of much that was good in common Catholic practices, the emancipation and ransoming of slaves, the kind treatment of slaves by Catholic masters. And within the Catholic Church the educated laity no longer

have the immature attitude that the common teaching of all Popes, Bishops, canonists and moralists on all moral questions has always been free from mistakes.

The process of human development involves making mistakes and using the ability to learn from past mistakes. It would be surprising if the same process of human development did not apply to the Church and her pastoral and moral theology. Indeed it would be surprising if the use of the ability to recognize and admit and accept the fact of past mistakes were not one of the remedies for "triumphalist" attitudes in the Church. Today in secular life, when there has been an accident or disaster on a large scale, modern national governments normally set up commissions of inquiry to investigate impartially why the accident or disaster occurred and whether any persons have been responsible through negligence or other cause. It is for consideration whether the same sort of procedure might profitably be used in the government of the Church so as not to inhibit the very important human faculty to learn from past mistakes. When any large-scale mistake of the fallible ordinary magisterium has been made, it is surely not sufficient quietly to drop the erroneous teaching and hush it up and whitewash its past history. After it has been corrected by some official declaration, its origins should be sought and then some institutional remedy provided, if necessary, to prevent such mistakes occurring in the future. The first step might be to set up a commission of inquiry. Two questions should be answered: first, why did this false teaching continue for so long to be commonly accepted as true in the Church? In other words, what were the reasons for the delay in its official correction? And secondly, what is the history of this false teaching?

In the absence of any official commission of inquiry into the disaster of the common Catholic teaching on slavery one can only hope that at some future time the whole question will be *sub judice;* but meanwhile one may try to make a private investigation. As is well known the common teaching on slavery was officially corrected by the Second Vatican Council in 1965:

> Whatever violates the integrity of the human person, such as mutilation, torture inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children... all these things and others like them are infamous. They poison human society, dishonour the Creator, and do more harm to those who practise them than those who suffer from the injury...
>
> Human institutions, private or public, must serve man's ends and minister to his dignity. They should be bulwarks against any kind of political or social slavery and guardians of basic rights under any kind of government...
>
> Economic enterprise is generally an affair of collaboration – thus it is wicked and inhuman to arrange and organize it to the detriment of anybody involved. Yet it often happens even in our time that those who work are made slaves to their own work. No "economic laws" can justify this.[1]

Fortunately today there is a move amongst moralists to treat moral theology as far as possible historically, and, in Bernard Lonergan's terminology, to teach the need for a "historical consciousness" instead of a "classical consciousness". Even a summary answer to the second question above – What is the history of the common Catholic teaching concerning the moral legitimacy of the institution of slavery? – will require a lengthy examination of the documentary sources from Old Testament writings to the present day. And so it will be helpful to suggest some preliminary answers to the first of the above two questions.

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(1) *Gaudium et Spes*, paras. 27, 29.

(A) THE REASONS WHY THE COMMON CATHOLIC TEACHING CONCERNING THE MORAL LEGITIMACY OF THE INSTITUTION OF SLAVERY WAS NOT CORRECTED BEFORE 1965.

(i) One of the important factors which undoubtedly delayed the final official correction of this common teaching until 1965 was the overriding influence of the principle of continuity of doctrine. Popes, Bishops, canonists and moralists in the eighteenth and nineteenth centuries could not easily accept that a moral doctrine which had been commonly taught for over 1,400 years could possibly be mistaken. Perhaps there are moralists alive today who still accept the moral legitimacy of the institution of slavery, following the traditional common teaching. Source-texts abound in which Popes and Bishops claim that the magisterium is the interpreter of the natural moral law and of Holy Scripture. This claim is, of course, justified and true. But both clergy and laity were formerly less mature in their appreciation that the fallible ordinary magisterium has occasionally been mistaken in its interpretation of the natural moral law in the past, for example, concerning the procedural use of torture. Today both clergy and laity understand better that if for over 1,400 years the Church's fallible ordinary magisterium was mistaken in its interpretation of the natural moral law concerning the institution of slavery, this in no way impugns the infallibility of the Church. For in no case were the criteria met for a statement of the magisterium on slavery to be infallible.

(ii) Another important factor, which follows from the first, and which delayed the official correction of the common teaching, was the influence of theological censorship. For the last 400 years there has been a lack of freedom of theological expression and publication. When the books of the writers of the

eighteenth century Enlightenment, Montesquieu, Rousseau, Filangieri and others, were placed on the Index of Prohibited Books without specifying any particular errors, it was made to appear that all their opinions were condemned *en bloc;* there was no public ecclesiastical appraisal to separate the wheat from the chaff, and to judge whether any of these new opinions could be correct, see (ix) (3) below. This eighteenth century humanism and secular rationalism was regarded by Catholic ecclesiastical authorities as in some way wholly tainted. Today it is better appreciated that the Old Testament itself has incorporated in its "Wisdom" literature the best of the humanism of ancient Egypt, Arabia and Edom; to take only one example, *Prov.* XXII 17–23 faithfully follows the maxims of the Wisdom of Amenemophis. The consequence of this disciplinary rejection of eighteenth century humanism was that any teaching of Catholic moralists concerning human rights was delayed for a further 150 years after the Declaration of the Rights of Man and of the Citizen of the French Revolution.

Again, when the competent clerical moralists like St. Alphonsus Liguori felt inhibited in opposing the unanimous opinion of his contemporaries (he simply omitted any treatment of the institution of slavery from his books), it left the field open to amateur lay writers; a few of these in the nineteenth century had their anti-slavery writings placed on the Index of Prohibited Books. When the Catholic Renaissance in Switzerland and Germany was suppressed in the early nineteenth century, one effect was to retard the liberation of moral theology from the influence of Roman civil law. The lack of theological research led to thoughtless conformism, and sterile repetition of the common teaching on slavery of earlier moralists, without adequate analysis and criticism of its supporting arguments, and without any attempt

to answer or even consider the weighty arguments advanced by the anti-slavery propagandists, both Christian and humanist.

(iii) With hindsight today it can be seen that another of the reasons for the long delay in correcting the common Catholic teaching on slavery was the uncritical re-introduction of the principles of Roman civil law concerning the legal titles of slave-ownership – in particular the title of birth from a slave mother, and their subsequent approval and almost canonization as equivalent to principles of reason and justice; see (v) (1), (viii) (1) and (2) below.

(iv) Another reason, which is connected with the previous one, was the long-continued misunderstanding of the meaning of the natural moral law; that is to say, there was a long-continued confusion concerning the sort of free activity and unfree suffering which is morally lawful or unlawful for human nature, after original sin and after personal sin. See (ii), (v) (1) and (viii) (3) below.

(v) Yet another reason seems to be that Catholic moralists, in general, have had a tendency to neglect a consideration of the natural and necessary effects of the slave-master's acts or omissions and to pay more attention to his intentions or motives. For the intention or motive is in the private mental or volitional order, belonging to one person only, and is easily described by the slave-master and understood by his confessor. But the effects of the act or omission are in the public and real order, and may impinge upon very many people, and may be very much more difficult for the slave-master or his confessor to discover. Yet they may be collectively of great social importance for the human race. The slave-master may well intend one series of beneficial

effects by the purchase and breeding of his slaves; but the totality of harmful effects which are caused by slavery may exceed his understanding – at least he may not advert to them; though in so far as he does foresee them and advert to them and understand them, he and not the legal institution of slavery, is responsible for them. Since slaves were often without any education, and were legally incapacitated from giving evidence in court, the voices and evidence of slaves concerning the harmful effects of slavery would not and could not usually be heard.

In countries where the ancient Christian tradition of Anglo-Saxon common law is accepted, one legal criterion for judging whether an act or omission is wrongful is the measurable fact whether its natural and necessary consequences and effects are harmful. Curiously, it is a criterion accepted by recent Catholic moralists in the so-called "principle of double effect"; but outside the use of this principle it appears to have been confused by some moralists with the quite separate question of the imputability of these consequences and effects. At any rate, Catholic moralists who wrote about the common Catholic teaching on slavery appear never to have asked the obvious question: What are the natural and necessary effects of slavery upon a human being? If they had done so, they might have discovered that, in modern terminology, it "infantilizes" a man or woman.[2] It tends to prevent a person from developing typically human activity of freewill and understanding. This infantilism results from the fact that the slave lacks responsibility for the use of his own lifetime. His natural "vocational right" to choose his own work or leisure is infringed by his master. In modern terms, to deprive human

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[2] See Elkins (S. M.): *Slavery, a problem in American institutional and intellectual life*. Chicago. 1959. 82, 86-7, 104, 111-3.

beings perpetually of this "vocational right" is inhuman and unjust in the same sort of way that it is inhuman and unjust to deprive them perpetually of their religious or intellectual rights. But though the inductive method was being used most fruitfully in the applied sciences and secular jurisprudence in the eighteenth and nineteenth centuries, see (ix) (3) below, it was still being neglected by Catholic moralists of this period in the applied science of moral theology, at least in regard to slavery.

(vi) Another reason, which follows from the previous one, for the long delay in the correction of the common Catholic teaching, was that although by the seventeenth century Catholic moralists had deduced *a priori* that chattel-slavery must be morally wrong because only God can have ownership over a human person, nevertheless they also argued *a priori* to the existence of another sort of slavery which is morally legitimate, see (viii) (7) below. Without any scientific experimental examination of the nature of slavery and slave-trading, they deduced that it must be physically possible to own and buy and sell the right to use the acts and work of a slave without of necessity owning and buying and selling the person of the slave. Unfortunately they forgot the Aristotelian-scholastic teaching that the nine categories of metaphysical accidents of a substance – actions, qualities, states, etc. – although really distinct from it, are nevertheless inseparable from it. Consequently their morally legitimate sort of slavery was a mere intellectual figment or artifact.

(vii) Another important reason for the long delay was the lack of appreciation by Popes and Councils and Bishops from the fourth century to the twentieth century that the circumstances of the institution of slavery had changed since the time of the Apostles and would continue to change. There is no doubt

that St. Peter and St. Paul were aware that they had to tolerate the institution of slavery as an inescapable evil in the Roman Empire. But it was not a necessary evil for all time. Its continuance was contingent *either* upon the maintenance in force of an inhuman system of slavery-legislation such as existed in the pagan Roman Empire, *or* upon the persistence of certain social customs and economic conditions, such as the symbiotic relationship of master and slaves in primitive subsistence-agriculture (which still exists today around the Sahara desert).

The Apostles were forced to tolerate the institution of slavery because any formal moral prohibition of slave-owning would have been regarded by the Imperial authorities as subversive and would have prompted further persecution of Christians; moreover, it would have been most likely to lead to social and economic disturbances, since slavery was a built-in feature of social and economic life; and such disturbances would have brought more suffering to the slaves even than the continuance of the institution of slavery.

However, on the occasion when the Empire became officially Christian in 380 A.D. there was surely an opportunity for a reconsideration by the Bishops of the legal institution of slavery since the Emperor could then legislate on behalf of the Church; but this opportunity to press for radical revision of slavery-legislation does not seem to have been taken.

On the other hand, after the barbarian invasions and the collapse of the Empire, the new customs and laws in parts of Europe, though influenced by earlier legal traditions, had considerable independence. There is some evidence that between the sixth and twelfth centuries there was a growing tradition amongst Christians that slavery was an institution which could not be reconciled with Christian charity and justice; changes in social conditions provided

opportunities to modify the institution of slavery into serfdom.

Again there was an occasion in the early thirteenth century when the Bishops and Church Councils in southern Europe surely had an opportunity to reconsider the institution of slavery; circumstances and conditions had entirely changed from those which prevailed in the time of the Apostles; if the principles of Roman civil law were to be critically studied in the universities of Europe and then fruitfully applied to the legal systems both of Church and State, then surely there was a need for a radical re-appraisal of pagan Roman law on slavery. There were surely two discordant traditions, the Christian and the pagan, concerning the institution of slavery. But by mid-thirteenth century the tradition of Roman civil law concerning the institution of slavery had prevailed within the Holy Roman Empire, and the moral legitimacy of the institution of slavery as such was accepted mainly uncritically not only by civil lawyers but also by Church canonists.

Finally, there was another occasion after the French Revolution when Bishops and theologians might have taken the opportunity to re-examine the question of slavery, especially in the light of contemporary anti-slavery propaganda; for social and agricultural and industrial conditions both in South and North America and the West Indies were beginning to change rapidly; if slavery had to be tolerated either under the inhuman legislation of pagan Imperial Rome or in the primitive social and economic circumstances of subsistence-farming communities, was slave-owning morally legitimate for Christians in an era of ever-increasing national economic growth in both South and North America, where aristocratic masters were exploiting the work of plantation-slaves, and where the slavery-legislation could be changed by the influence of Christians-

(viii) Yet another reason was undoubtedly the long continuance, at least until the time of the Galileo controversy, of a tendency towards strict fundamentalism in the interpretation of Holy Scripture, see (i), (iii) and (viii) (4) below. The interpretation of *Gen.* IX 25–27, Noah's curse of Ham (or Cham or Canaan), to mean that God has cursed the Negro race, apparently survived until 1873 when Pope Pius IX attached an indulgence to a prayer for the "wretched Ethiopians in Central Africa that almighty God may at length remove the curse of Cham from their hearts"[3] See (iv) (3) below.

(ix) A further reason for the long delay appears to be that the use of charismatic gifts by the Catholic laity has normally not been accepted as a means of putting right social injustices and providing a remedy for unjust pharisaism and legalism. Unlike the Hebrew prophets who drew the attention of the people of God to the evils of idolatry, Our Lord drew the attention of His followers to the evil of concealing injustice under the cloak of law. The few members of the Society of Friends (Quakers) in the early eighteenth century who appear to have been open to the direction of the Holy Spirit concerning slavery, exercised an enormous influence, first on their fellow Quakers, and then on all North American Protestants, see (ix) (2) below. For some time, other Quakers who were slave-owners rejected this particular charismatic direction, but eventually the majority of eighteenth century North American Quakers had a sensitive social conscience concerning Negro slavery. On the other hand, the graces received by most of the eighteenth and nineteenth century Catholic laity from the traditional Latin prayer and liturgy were apparently insufficient to awaken their consciences to the unjust slavery-

[3] *The Raccolta.* London, 1909. No. 451.

legislation in Latin America, North America, West Africa, etc., and insufficient to overcome the baneful influence of Roman civil law concerning slavery on Catholic moral theology and canon law.

(x) So in conclusion, a final reason for the delay in the correction of the common Catholic teaching on slavery was the absence in the Catholic Church in recent centuries, but especially between 1790 and 1965, of some institutional arrangement for the collegiate re-consideration and re-appraisal by Popes and Bishops of common moral teaching. No institution, such as the International Commission of Theologians (which had its first meeting in 1969), no commission of inquiry, then existed for ensuring that any "dead wood" in common Catholic moral teaching should be thoroughly examined and duly pruned if it was found, for one reason or another, to be defective.

It is worth attempting to answer in summary form the second of the above two questions.

(B) THE HISTORY OF THE COMMON CATHOLIC TEACHING CONCERNING THE MORAL LEGITIMACY OF THE INSTITUTION OF SLAVERY.

A documentary history in this wide field cannot wholly avoid allusion to certain particular aspects which deserve (and in a few cases have received) separate full scale treatment, such as the history of Eastern Orthodox and Protestant views on slavery, and the matters of the conversion, baptism, catechizing, instruction and religious practice of slaves, the marriage or ordination of slaves, their entry into religious orders, their servitude as Christians under Jewish or pagan masters, their duties and the duties of their masters, their punishments, the treatment of runaway slaves, the ransoming of Christian slaves by Christians, and of Moslem slaves by Moslems, the slave-commerce within countries and between countries, the transition under law in each country from chattel-slavery to serfdom, and the civil slavery of the Jews in the Holy Roman Empire. All these important aspects are here omitted as far as possible. Also omitted, of course, are questions concerning the anthropology, sociology or economics of slavery and serfdom. This is not a history of slavery, but merely a summary history of Catholic teaching in the Western Church concerning the institution of slavery.

(i) The institution of slavery in the Old Testament

During the centuries of the progressive revelation of God to the Israelites, the institution of slavery was in full legal possession as the prevalent social and economic system of the neighbouring ancient civilizations of the Middle East and North Africa, and in fact of all ancient civilizations. At various times in the course of their history, the Israelites were enslaved by their Egyptian, Assyrian and Babylonian neighbours. But slavery amongst the Israelites was different from all other contemporary slavery; the Mosaic law led in the course of time to

a humane treatment of all slaves (*Lev.* XXV 43; *Sirach* XXXIII 25–33; VII 22–23).

(*a*) *Enslavement of Israelites:*

There could be enslavement of one Israelite by another for four reasons, but in no case was it perpetual and involuntary:

(*i*) Judicial penalty for theft after breaking into and entering a house, if the thief was unable to make restitution (*Ex.* XXII 3).

(*ii*) Voluntary sale due to destitution (*Lev.* XXV 39, *Ex.* XXI 2–4, *Prov.* XXII 7, *Amos* II 6 and VIII 6).

This method was particularly liable to abuse; a debtor might be forced by his creditor to sell his own children into slavery (II *Kings* IV 1; *Neh.* V 1–8).

A limit of six years was placed upon his compulsory servitude (*Deut.* XV 12–15, 18), a period which might be still less if the Jubilee year occurred (*Lev.* XXV 10, 40–41). But if the slave wished voluntarily to continue in perpetual servitude he might do so (*Ex.* XXI 5–6; *Deut.* XV 16–17); if he was emancipated he had to be provided for generously (*Deut.* XV 13, 14). This duty of emancipating Hebrew slaves after six years was not always strictly observed (*Jer.* XXXIV 8–22).

(*iii*) Redemption or ransoming of an Israelite from a foreigner (*Lev.* XXV 47–55).

(*iv*) Sale of a daughter by her father on condition of betrothal, and with subsequent rights either of marriage to her master or his son or of freedom (*Ex.* XXI 7–11).

Israelites were forbidden to enslave their fellow Israelites after capture as prisoners of war (*II Chron.* XXVIII 8–15), or by kidnapping them (*Deut.* XXIV 7; *Ex.* XXI 16).

(*b*) *Enslavement of foreigners:*

Foreign slaves had to serve in perpetuity (*Lev.*

XXV 46), and their children were born into slavery (*Gen.* XVII 12, 13, *Ex.* XXIII 12, *Lev.* XXII 11).

(*i*) Foreign slaves could be acquired by purchase (*Lev.* XXV 44–46).

(*ii*) They could also be acquired as prisoners of war (*Num.* XXXI 26), or by right of conquest (*Deut.* XX 11).

(*iii*) Foreign female slaves could also be acquired by capture as prisoners of war (*Num.* XXXI 18; *Deut.* XX 14), but if any of these prisoners of war were selected as wives, they might not subsequently be sold as slaves (*Deut.* XXI 10–14).

Runaway slaves were not to be returned to their masters (*Deut.* XXIII 15–16). A master was seriously punishable for murder or seduction of a slave (*Ex.* XXI 20–21; *Lev.* XIX 20–22).

Slaves retained many human rights. They had to be set free if seriously injured by their master (*Ex.* XXI 26–27). Israelite slaves retained their religious rights and duties (*Ex.* XII 44; *Lev.* XXII 11; *Deut.* XII 11, 12); they could acquire the same property rights as sons and heirs (*Prov.* XVII 2), and could even marry their master's daughter (*I Chron.* II 35); above all, they retained their human right to a day of rest, so in fact their masters did not have an absolute control of their life-time (*Ex.* XX 10, XXIII 12; *Deut.* V 14). Finally slaves were regarded as having the same created human nature as free persons and could even take legal action against their master (*Job* XXXI 13–15).

It was not until the middle of the twentieth century that Albrecht Alt drew attention to the distinctions and varieties in the formulation of Israelite legislation.[4] Since this date other scholars have modified

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[4] Alt (Albrecht): *Kleine Schriften zur Geschichte des Volkes Israel.* 2nd. edn. 1959, Munich. Vol. I, 285-332.

these views.[5] However it is now widely accepted that there are two distinct forms of Israelite law, first statute laws, usually expressed in the second person singular, "Thou shalt", or "Thou shalt not . . .", as affirmative or negative commands; the decalogue is in this form. Secondly, case laws, usually expressed as a conditional clause in the third person, "If a man . . .", or "When a man . . .", stating the civil or criminal case, and ending with the judicial decision, in criminal cases often with the penalty or formula of cursing attached.

For example, in Israelite criminal law, the case of breaking an entry: "If a thief is caught breaking in . . . full restitution must be made; if he has not the means, he must be sold to pay for what he has stolen" (*Ex.* XXII 1, 3). In this case, the penalty for the crime, for insolvent Israelite thieves, is enslavement.

The three main O.T. texts concerning slaves which were constantly interpreted by Christian writers as "proofs" of the moral legitimacy of the institution of slavery were: *Ex.* XXI 1–11, *Lev.* XXV 39–55, *Deut.* XXI 10–14. But these texts, and other texts in the Torah concerning slaves, are clear examples of case law, and are quite distinct from the moral commands or moral prohibitions of Israelite statute law.[6]

The implication of this distinction between case law and statute law in the Torah is that the slavery legislation of the Old Testament may not legitimately be used by Christians as a "proof" that God has revealed that the institution of slavery is morally legitimate. The final editing of the Torah probably took place about 425 B.C. The texts concerning

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[5] Botterweck (Gerhard J.): "The Form and Growth of the Decalogue." *Concilium* (Eng. edn.), May 1965, 33-44.

[6] Cf. Noth (Martin): *Das Zweite Buch Mose: Exodus* .Göttingen. (1959) [Das Alte Testament Deutsch. 5] 143.

slavery merely represent a collection of accounts of the social and economic customs and civil and criminal laws which regulated this institution at this time and for many hundreds of years previously.

(ii) Natural freedom and legal slavery under Roman law

In the first century, A.D., Christianity had found the institution of slavery, as the social and economic system of Greco-Roman antiquity, in full legal possession in all countries of the Roman Empire. But there was a striking difference between the humane slavery for the people of God under the Mosaic law of the Old Testament and the cruel slavery for the people of God under pagan Roman law in the Apostolic times of the New Testament. The institution of slavery under classical Roman law is sufficiently well known and so amply documented that there is no need to recapitulate its cruel characteristics here.

A slave was a mere nullity at civil and praetorian law. He was denied the juridical attributes of personality. He was reduced to mere property to be used up or disposed of at will or treated like an animal by his master who had absolute power over him. Convert Christian slaves in Apostolic times possessed none of the religious and other human rights which had belonged both to Israelite and to foreign slaves under the Mosaic law. Under a harsh master the life of a Christian slave, a mere chattel in his owner's hands, could be one of extreme bitterness, hardship and degradation, with the possibility of rigorous punishment or death never out of sight.

But four texts from the classical sources can be quoted which indicate an appreciation by the ancient pagan Roman jurists that freedom is natural to mankind and that the institution of slavery is of human origin:

D. I. 5. 4: "Slavery is an institution of the *jus gentium*, by which one human being is subjected to the ownership of another, contrary to nature." (Florentinus).

D. I. 1. 4: "Manumission also belongs to the *jus gentium* . . . and has its origin in it; for under the natural law everyone is born free, so both slavery and manumission would be unknown; but after slavery arose under the *jus gentium*, then the benefit of manumission followed." (Ulpianus).

D. I. 17. 32: "Under the civil law, slaves are reckoned as non-persons (*pro nullis habentur*); but not so under the natural law, because as far as the natural law is concerned, all men are equal." (Ulpianus).

Inst. I. 2. 2: "The *jus gentium* is accepted by the whole human race; for it is what the various nations have found to be what practice and human destiny leads to; for wars arise and there follow captivities and enslavements which are contrary to natural law; for by the natural law in the beginning all men were born free."

D. XII. 6. 64: "Freedom is an expression of the natural law, ownership was introduced by the *jus gentium*." (Tryphoninus).

A similar ray of light is to be found in the classical Greek philosophical sources; the sophist Alcidamas is reported by Aristotle to have taught: "God created all men free; nature has made no one a slave."[7] And this Greek tradition was followed by Roman stoic philosophers including Cicero and Seneca.[8]

(iii) The institution of slavery in the New Testament

In the New Testament St. Paul, the convert pharisee who was well learned in the Mosaic Law, presented two distinct doctrinal themes on the subject of slavery. The one might be called, in modern terms, a "dogmatic theology of slavery"; the other might be called a "moral theology of slavery". These two themes are logically distinct, and it is noticeable that some of the early Fathers of the Church in their commentaries would emphasize one or other theme, whichever was suitable to their purpose, and might even ignore or omit the other.

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[7] *Rhetoric* I. 13. 1373 b. 18.
[8] See, for example, Seneca *Epist.* 47.

First, there was proclaimed both to free citizens of the Roman Empire as well as to slaves, a doctrine of Christian faith which was an important part of St. Paul's message of salvation: that all who are baptized as Christians are equally, without discrimination, sons and daughters of the one heavenly Father, and are brethren in Christ. So in Christ there is neither slave nor free; all, whether slaves, freemen and freewomen, or masters, are all one person in Christ (*Gal.* III 26–28; *Col.* III 11; *I Cor.* XII 13).

Secondly, St. Paul applied this "dogmatic theology" in the moral directives which he preached both to masters and slaves concerning their mutual moral and legal duties in the existing circumstances of the pagan Roman Empire under Imperial Roman law. These directives are repeated in *Col.* III 22–IV 1, *Ephes.* VI 5–9, *I Tim.* VI 1–2, *Titus* II 9–10, and they show that St. Paul was forced, during his missionary journeys and in his letters to his converts, to tolerate the binding social and economic relationships of the institution of slavery under Roman law. But he indicated that this master-slave relationship was only tolerable amongst Christians in so far as it was an unavoidable evil, and provided that there was not only charity but also – as far as possible – honesty and fairness on both sides. He discouraged slaves from being disaffected with their lot, and recommended slaves to choose emancipation if it is offered, and advised free citizens not to choose voluntary enslavement (*I Cor.* VII 20–24). He condemned kidnappers of other persons (*I Tim.* I 10).

From the first "dogmatic" theme, it would follow logically that brothers and sisters in Christ should not treat one another as slaves; for the master-slave relationship is not a relationship of brethren (*Philem.* 8-17). Consequently, manumission according to Roman law is the logical conclusion, though it is not explicitly stated.

From the second "moral" theme, it would follow that where, for some reason, manumission is impossible, then the existing legal obligations should be made use of by Christians for purposes of growth in Christian virtue; in many cases manumission would be out of the question for no other reason than that Christian slaves might be serving pagan masters. St. Peter's "moral theology" concerning the existing legal master-slave relationship under Roman civil law (*I Pet.* II 13–20) is precisely the same as that of St. Paul; Christian brethren should be subject to the social institution of slavery for the Lord's sake (v. 13).

Today it is commonly accepted that both St. Peter and St. Paul were referring to the Christian "household codes" concerning the social institutions of slavery and marriage.[9] These household codes regulating contemporary Christian social life were modelled upon Jewish or Hellenistic codes. Just as slaves should be respectful and obedient to their masters (*I Pet.* II 18) so also "in the same way" wives should be obedient to their husbands (*I Pet.* III 1). This apostolic moral teaching on slavery and marriage had application in the existing circumstances in the Roman Empire where the rulership of the master over the slave and of the husband over the wife were defined by the civil law. The Apostles were providing the existing legal relationships with a theological superstructure, so that Christian slaves and wives could more easily learn the virtues of following Christ, and so that Christian masters and husbands could more easily learn the virtues of care for their legal subjects. The Apostles were not canonizing the legal relationship of master and slave

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[9] See Schillebeeckx (E.) O.P.: *Marriage – Secular reality and saving mystery*. I, part II, chap. V (II A): "The husband is the head of the wife; biblical assertion, or simply social pattern?"

as deriving from any divine institution or commandment. And so these texts of Christian household moral codes may not legitimately be used by Christians as "proofs" that God has revealed that the institution of slavery is morally legitimate.

(iv) The teaching of the Church Fathers and Councils up to the late twelfth century.

The patristic doctrine concerning slavery may conveniently be subdivided into a number of distinct themes, each of doctrinal importance:

(*iv*) (1) *Repetition of the Apostolic "household code": duties of Christian slaves and masters*, 100–1120 *A.D.*

The earlier Latin "Doctrina" (*c.* 100 A.D.) and the later Greek version called the Didache (*c.* 150 A.D.) provide a moral exhortation for masters and slaves, in section 4, emphasizing that God is no respecter of a person's status but is impartial.[10]

In 340 A.D. the apostolic moral teaching on slavery under the conditions of pagan Roman law was converted into local Church law at the Council of Gangra in Asia Minor. Some Eustathian (Manichean) heretics were teaching slaves to despise their masters and leave their service. The Council decreed:

> If anyone, on the pretext of religion, teaches another man's slave to despise his master, and to withdraw from his service, and not to serve his master with good will and all respect, let him be anathema.[11]

This decree later became part of the Western Church's collections of canons and continued to be quoted for a further 1,400 years.

St. Basil provides a presentation of St. Paul's "moral theology" of slavery in his Ethics (*c.* 370 A.D.), showing the slaves' duty of obedience for the glory

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[10] Goodspeed (E.J.): *The Apostolic Fathers*. Harper, New York, 1950, pp. 6-7, 13.

[11] Canon 3. *C.J.C. Decreti Gratiani*, II, C.XVII, Q.IV, c.37.

of God to their masters in all matters which exclude the infringement of God's moral laws, and the masters' obligation to be considerate towards their slaves.[12] In his monastic rule, St. Basil required runaway slaves to be sent back to their masters; referring to Philemon (vv. 10, 12) he indicates that in such circumstances there is no question of emancipation, but merely of the slaves' submission to the yoke and the masters' forgiveness, except in the case of the tyrannical master who commands the breaking of the moral law.[13]

The Apostolic Constitutions, consisting of texts collected by an unknown Arian editor in Syria about 380 A.D., emphasize that the Christian master-slave relationship should be one of charity, but the logical conclusion of manumission is not adverted to.[14]

St. John Chrysostom in his introduction to his homilies on Philemon (*c.* 400 A.D.) teaches that it is most fitting for slaves to remain in servitude; he is afraid that opponents of Christianity might say that its introduction would be revolutionary if slaves could be taken away from masters, with violent consequences.[15] In his second homily on Philemon, St. John Chrysostom says that the real fraternal relationship between masters and slaves will exist in heaven. He is implicitly unwilling to admit that it can exist truly on earth only by emancipating one's brother in Christ from the bondage of slavery.[16]

At about the same date (400 A.D.) in the West, St. Augustine was exhorting the slaves to fulfil in a Christian manner their duty of faithful service.[17] He

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[12] Rule 75, c. 1 and c. 2. Migne Patr. Gr. 31, 856.
[13] Q.XI. MPG 31, 948. Compare St. Isidore of Pelusium (c.360-449 A.D.). *Epist*, L.4, n.12. MPG. 78, 1060-1.
[14] L.4, c.12. MPG 1, 824.
[15] MPG 62, 703-4.
[16] MPG 62, 711.
[17] *Enarratio in Ps.* CXXIV, n.7.Migne Patr. Lat. 37, 1653-4.

even exhorts the slave not to desire manumission in order to leave the home of his master.[18]

In France in the early twelfth century, when "communes" were being set up and slaves were withdrawing by force from the ownership of their masters, Radulphus, Archbishop of Rheims, is recorded by a contemporary Abbot as denouncing this innovation. Following *I Pet.* II 18 and canon 3 of the Council of Gangra he taught that the slaves should be subject to their masters and not withdraw from their service.[19]

In conclusion, this Apostolic moral teaching evidently has validity as long as Christian masters and Christian slaves are living under the same conditions and circumstances and pagan legislation that existed in the time of the Apostles.

(*iv*) (2) *All masters and slaves share the same human nature, are subject to the same laws of life and death,* 250–1174 *A.D.*

This theme, which is found already in the Old Testament (*Job* XXXI 13–15), appears about 250 A.D. in St. Cyprian of Carthage when he is arguing with Demetrianus, not against slavery but against atheism.[20]

About 385 A.D. the same theme appears in the East in the fourth homily by St. Gregory of Nyssa on *Ecclesiastes.*[21] St. Gregory takes the argument to its logical conclusion and by this philosophical route he provides the first truly "anti-slavery" text of the patristic age. As events turned out, his argument against the very institution whereby one man owns another did not bear fruit for another 1,400

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[18] *Enarratio in Ps.* XCIX, n.7. MPL 37, 1275.
[19] Guibertus, Abbot of Nogent-sous-Coucy (1053-1124: *De vita sua.* L.III, c.10. MPL 156, 932-3.
[20] *Epist. ad Demetrianum.* c.8. MPL 4, 549-550.
[21] MPG 44, 665-7.

years. Since he was so far ahead of his time it is worth quoting his words in full:

> "I have owned slaves, both men and women."
>
> You condemn a person to slavery whose nature is free and independent, and you make laws opposed to God and contrary to His natural law. For you have subjected one who was made precisely to be lord of the earth, and whom the Creator intended to be a ruler, to the yoke of slavery, in resistance to and rejection of His divine precept. Have you forgotten what limits were given to your authority? Your rulership has been limited to the extent, namely, that you may only have ownership over brute animals. . .
>
> How is it that you disregard the animals which have been subjected to you as slaves under your hand, and that you should act against a free nature, bringing down one who is of the same nature as yourself, to the level of four-footed beasts or inferior creatures. . . ? For the only proper slaves of mankind are the animals devoid of intelligence. "Grass must grow for the cattle; those faithful servants of men must have their fresh feed."[22] But you have abused the nature of service and of ownership, and have made service into slavery for yourself and have obtained ownership over the owner.
>
> "I have owned slaves, both men and women."
>
> Tell me, what price did you pay to acquire them? What is the equivalent in goods for the cost of human nature? How much, in terms of money, is the value of intelligence? What price did you pay, in obols, for the image of God? For how many staters did you buy a human nature made by God?. . . For One who has known human nature said that not even the whole world is a sufficient price for a just payment for the soul of a man. . .
>
> Is there any difference in any respect between slave and master?. . . Do they not both preserve their nature by eating the same food? Is there not the same structure of internal organs? Do not both become the same dust after death? Do they not have the same judgment? Do they not go to the same heaven or the same hell? You who are equal in all respects, why should you be superior such that while you are only a man you think that you can be the owner of a man?

At the end of the sixth century, Pope St. Gregory I in his Pastoral Rule still followed St. Paul's "moral theology" on slavery, although circumstances had radically changed since the first century, and the

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[22] *Ps.* CIII. 14. (Knox translation).

Christian emperors were then legislating, not against, but on behalf of the Church and were using civil authority even to enforce ecclesiastical discipline. St. Gregory directed that slaves and masters should be given different counsel: slaves should be told to view themselves humbly, not despise their masters, and recognize that they are only slaves. On the other hand, masters should be told to remember that by nature they are equal to their slaves, not to be proud, and to recognize that they too are slaves of God.[23]

About 830 A.D., Bishop Jonas of Orleans repeats this theme in his Instructions for the Laity that masters and slaves are equal in possessing the same human nature, even though the slaves may be degraded or lacking in culture and different as regards the colour of their skin.[24]

Finally Pope Alexander III in his appeal in 1174 to Lupus the Moorish King of Valencia to release Christian prisoners of war, makes use of the theme that everyone has the same God in heaven who created all men to be equal and not slaves by nature.[25]

(*iv*) (3) *Slavery, as an institution, is a consequence of original sin.* 380–817 *A.D.*

About 380 A.D. St. Gregory Nazianzen is teaching that mankind was created by God to be free and wealthy in paradise but that original sin led to such evils as slavery and destitution.[26]

Meanwhile in the West at about the same time, Pseudo-Ambrose (Ambrosiaster) traces the origin of slavery to the cursing of Ham by his father Noah (*Gen.* IX 25–27).[27] This disastrous example of fundamentalist exegesis continued to be used for

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[23] *Regulae pastoralis liber*. Pars III, c.5. MPL 77, 56.
[24] *De institutione laicali*. II, 22. MPL 106, 213-5.
[25] MPL 200, 985.
[26] *Sermon* XIV: *On the love of the poor*. c.25. MPG 35, 892.
[27] *Commentary on Colossians* (IV 1). MPL 17, 439.

1,400 years and led to the widely held view that African Negroes were cursed by God. In fact all the enemies of Israel, whatever their race or ethnological origins, were all called Hamites or Canaanites as a generic term, and since all the enemies of Israel were regarded as being enemies of God, this was expressed primitively in the form that they were all cursed by God, and therefore fit for capture and enslavement as prisoners of war by Israel (*Num* XXXI 26, *Deut.* XX 11).

About 400 A.D. St. John Chrysostom is repeatedly asserting that human wickedness, such as avarice, envy and insatiable greed, has given rise to servitude; he compares the servitude of wife to husband, slave to master, and subject to governor; so he regards slavery as the offspring of sin.[28]

In 419 A.D. St. Augustine regards slavery as the result either of sin, as in the case of Ham or of adversity as in the case of Joseph (*Gen.* XXXVII 28, 36).[29] His exegesis of *Genesis* is quoted verbatim and without acknowledgement both by Alcuin (d. 804 A.D.) and Rabanus Maurus, Archbishop of Mainz (d. 856 A.D.).[30] Later, in 425 A.D., St. Augustine writes that the state of slavery is justly imposed on sinners as a penalty for their own benefit; however he makes no attempt to explain why those born from a slave-mother should incur this penalty.[31] The offspring of a slave-mother have admittedly been born subject to original sin but are innocent of all personal sin. So the same argument should apply to those born from a mother who is free; yet her children are not born slaves.

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[28] *On Genesis, sermon* 4, MPG 54, 595; *Homily on Lazarus* VI, 7, 8, MPG 48, 1037-9; *Homilies on Ephesians* VI, 22, MPG 62, 157.
[29] *Quaestiones in Heptateuchum*, L.I, c.153, MPL 34, 589-590.
[30] MPL 100, 557 and MPL 107, 646-7.
[31] *De Civitate Dei*, XIX, 15, MPL 41, 643.

Soon afterwards in the East, around 436 A.D., Theodoret of Cyros attempts to take this explanation of slavery to its logical conclusion, and to show that it is not blasphemous to ascribe the slavery of those born from a slave-mother to Divine Providence.[32] His explanation emphasizes the responsibilities, worries and labours of the masters who are shouldering a sort of fifth century "white man's burden", in looking after the needs of their slaves.

About 600 A.D., Pope St. Gregory I accepts that all men are equal by nature but that a hidden dispensation of providence has arranged a hierarchy of merit and rulership, in that the differences between classes of men have arisen as a result of sin and are ordained by divine justice.[33]

St. Isidore of Seville (d. 636 A.D.) summarizes this explanation of the justice of the institution of slavery under divine providence. Those whom God perceived were not fit for freedom, He more mercifully inflicted with slavery. A slave's capacity for doing wrong must needs be restrained by his master's power. To be submissive as a slave is better than to be proud as a free man.[34] This text was later quoted verbatim by the Council of Aachen in 817 A.D.[35]

(*iv*) (4) *Slavery can be beneficial for vicious or stupid people*, 370–425 *A.D.*

A logical consequence of the view that slavery is a providential consequence of original sin, is the attitude that slavery can be beneficial both for sinners and for those whose stupidity demands direction by others. This attitude is expressed both by St. Basil (d. 379 A.D.)[36] and by St. Augustine about 425 A.D. [37]

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[32] *On Providence*, VII, MPG 83, 668-681.
[33] *Expositio in librum B. Job*. L.XXI, c.15, MPL 76, 203-4.
[34] *Sententiae*, L.III, c.47, MPL 83, 717.
[35] Canon 104, Mansi, *Collect. Concil.* 14, 212.
[36] *Liber de Spiritu Sancto*, C.20, n.51, MPG 32, 160-1.
[37] *De Civitate Dei*, L.XIX, c.21, MPL 41, 649.

(*iv*) (5) *Slavery is imposed as an ecclesiastical penalty by local Church Councils*, 633–1089 *A.D.*

Under Roman civil law persons convicted of certain crimes and duly sentenced could suffer the lifelong capital punishment of slavery. After the barbarian invasions and the fall of the Roman Empire, penal slavery was still used both by civil and ecclesiastical authorities.

For example, in the Visigothic kingdom in 633 A.D., the fourth Council of Toledo, presided over by St. Isidore of Seville, made provision for clerics who were not lawfully married and were having forbidden relations with foreign women or their own female slaves; the Council decreed that such women were to be taken away by the Bishop and put up for sale as slaves, and the guilty clerics were to do penance.[38]

Again in 655 A.D., the ninth Council of Toledo decreed that the penalty of enslavement was to be imposed, not on the priests who offended against clerical celibacy but on their offspring who would remain permanently in slavery to the Church.[39] This decree was later incorporated into the Western Church's collections of canons.

In 1012 A.D. a similar decree was enacted by the Council of Pavia concerning the children of clerics, even those born of free women; they were to become slaves of the Church.[40]

In 1089 A.D. at the Synod of Melfi, Pope Urban II enforced clerical celibacy by granting to secular princes the power to reduce the wives of clerics to slavery.[41] This decree was also incorporated into the Western Church's collections of canons.

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[38] Canon 42. Mansi 10, 630.
[39] Canon 10; Mansi 11, 29; *C.J.C. Decret. Grat.* II, C.XV, Q. VIII, c.3.
[40] Canons 3 and 4; Mansi 19, 353 and 355.
[41] Canon 12; Mansi 20, 724; *C.J.C. Decret. Grat.* I, D.XXXII, c.10 See also 3rd Council of Rome in 1051 A.D.; Mansi 19, 796.

The ecclesiastical penalty of enslavement was also imposed, in certain circumstances, for the crime of abduction of a woman by force.[42]

(*iv*) (6) *Christian slaves and masters are equally children of the same heavenly Father and brethren in Christ,* 315–830 *A.D.*

About 315 A.D. in the West, Lactantius is teaching that in the eyes of the heavenly Father no one is a slave and no one is a master, for He is equally Father of all, and all are free, and there are no differences between individuals for all are equally brethren and fellow-slaves in religion.[43]

In mid-fourth century, Pope Julius I (d. 352 A.D.) is writing to the Eastern Bishops that everyone, slave and free, is subject to the same heavenly Father and the same divine law; hence neither slave nor free, once joined in wedlock, can be divorced from his spouse.[44] This text was later incorporated in the Western Church's collections of canons.

At the end of the fourth century, St. Ambrose (d. 397 A.D.) provides a commentary on St. Paul's "dogmatic theology" of slavery in *Gal.* III 28 and *I Cor.* VII 21, 22. Slavery does not diminish nor does freedom increase merit, for it is faith, not status, which brings the merit of real aristocracy. To neither slave nor free has Christ given more; He has shared out to each with equal measure; the merits of good slavery and good freedom are not weighed differently in the judgment of Christ.[45]

About 400 A.D. St. John Chrysostom (d. 407 A.D.) takes this theme of *Gal.* III 28 to its logical conclusion. Slavery is the penalty of sin, but in Christ there is neither slave nor freeman. So if a Christian

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[42] *C.J.C. Decret. Grat.* II, C.XXXVI, Q.1. c.3.
[43] *Institutionum Divinarum.* L.V, C.15 and 16. MPL 6, 598-600.
[44] *Epist. I ad Episcopos Orientales,* c.4. MPL 8, 969. *C.J.C. Decret. Grat.* II, C.XXIX, Q.2, c.1.
[45] *Exhortatio Virginitatis,* C.1, n.3. MPL 16, 337.

master has more than one or two domestic slaves he should train them in crafts to be self-sufficient and then emancipate them.[46]

A fifth century sermon of unknown authorship, formerly ascribed to St. Augustine, deplores that Christian masters do not spare their Christian slaves who by grace are their brethren. For the slave has likewise put on Christ and partakes of the same sacraments, and has God as his Father. Why then does he not have his master as a brother?[47]

In the ninth century, St. Agobard of Lyon (d. 840 A.D.) refers to *Col.* III 9–11. He writes that God created men equal, but by a hidden and just dispensation, as a result of sins, some are masters and others are slaves; although slaves are subject to masters in their bodily service, yet God willed that their interior life should be subject to Him alone. And so the interior man is free though the outer man is enslaved.[48]

Whensoever throughout the Christian era, and wheresoever amongst Christian peoples, true Christian charity is practised, then and there will be found reference to St. Paul's doctrine that all the baptized are brethren in Christ, and that this unity in Christ includes masters and slaves. To avoid endless repetition, little further mention will be made of this all-important doctrine, except to draw attention here to its use in 1627 by Father Alonso de Sandoval, the teacher of St. Peter Claver. Here are his words:

> And since masters and slaves are brethren by nature and in faith and by indwelling of grace, and have the same Father and Creator who is God, and are bound by the same covenant which is His law, there is no reason why the one should despise the other.[49]

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[46] Homily 40 on *I Cor.* XV 29-34, MPG 61, 354.
[47] Pseudo-Augustinus. *Serm.* CXLVI, 3. MPL 39, 2030.
[48] *Epist. ad Proceres Palatii.* MPL 104, 176-7.
[49] *Tractatus de instauranda Aethiopum salute.* L.II, c.4.

(*iv*) (7) *The emancipation of slaves by Christian masters* 385–1171 *A.D.*

Towards the end of the fourth century, St. Gregory of Nyssa (d. 394 A.D.) writes in one of his prayers on Easter, that this is the time of year when bonds are loosed, debtors are freed, and slaves are released from their bondage according to the custom of the Church.[50] All manumission of slaves had to be performed according to law, and since 321 A.D. manumission in Church had been sanctioned by the Emperor Constantine I.

About 400 A.D. St. Augustine refers to this ceremony of manumission.[51] The master leads his faithful slave by hand into the Church and publicly reads his notification granting freedom to his slave. About 419 A.D. in his exegesis of the books of Moses he observes that the milder law for Hebrew slaves who were released after six years of servitude is no precedent for Christian slaves; for by Apostolic authority Christian slaves are commanded to be subject to their masters.[52]

In 506 A.D. the Council of Agde in the Visigothic kingdom forbade Bishops to sell the slaves of the Church; but if a Bishop had emancipated any of these for their good services, his successor must respect this manumission and leave them in possession of the land, vines and buildings which have been granted to them on condition that the value of these does not exceed 20 solidi; if it exceeds this amount, the excess must be returned to the Church after the death of the Bishop.[53] This decree was later incorporated into the Western Church's collections of canons.

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[50] 3rd Prayer. MPG 46, 657.
[51] *Sermo* XXI, 6. MPL 38, 145.
[52] *Quaestiones in Heptateuchum.* L.II, n.77. MPL 34, 624.
[53] Canon 7. Mansi 8, 319. *C.J.C. Decret Grat.* II, C.X., Q.II, c.1 and II, C.XII, Q.II, c.57.

In 517 A.D. the Council of Jena in Gaul near Lyon decreed that the slaves who had been bestowed on monks by their Abbot were not to be emancipated, on the grounds that it would be unjust for slaves to enjoy the idleness of freedom while the monks were engaged in daily work cultivating the land.[54]

In 541 A.D. the fourth Council of Orleans decreed that when a Bishop died the slaves of the Church whom he had emancipated would remain free on condition of not leaving the service of the Church, even though he had not bequeathed any property of his own to the Church in compensation.[55]

The second Council of Macon in 585 A.D. required the Bishops to defend the free status of slaves who had been legitimately emancipated in a Church.[56]

Pope St. Gregory I formulated in 595 A.D. some phrases in a deed of manumission of two slaves of the Church of Rome, Montana and Thomas, and his words were subsequently much quoted in similar documents:

> Since our Redeemer, the Author of all life, deigned to take human flesh, so that by the power of His Godhead, the chains by which we were held in bondage might be broken, and He might restore us to our original state of freedom, it is most fitting that by a grant of manumission, masters should restore those whom nature had sent free into the world, but who had been condemned to the yoke of slavery by the *jus gentium*, to the freedom in which they were born. . . [57]

This text was subsequently incorporated into the Western Church's collections of canons.

In the early seventh century St. Isidore of Seville (d. 636 A.D.) reminds Abbots and monks that under Visigothic law it is illegal for them to emancipate

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[54] Canon 8. Mansi 8, 560.
[55] Canon 9. Mansi 9, 111.
[56] Canon 7. Mansi 9, 952-3.
[57] MPL 77, 803. *C.J.C. Decret. Grat.* II, C.XII, Q.II, c.68.

a slave of a monastery since they are not the personal owners.[58] And in 633 A.D. the fourth Council of Toledo under his presidency reversed the ruling of the fourth Council of Orleans in 541 A.D., mentioned above, and decreed that if a Bishop does not make compensation to the Church he may not emancipate the slaves of the Church, as it would be unjust to the Church to do so. If nevertheless a Bishop has presumed to do so without compensation, his successor may recall such freemen into the ownership of the Church.[59] This ruling prevailed over the earlier Gallic one and was later incorporated into the Western Church's collections of canons.

In 816 A.D. the Synod of Chelsea in Saxon England decreed that at the death of every Bishop all his English slaves were to be freed, and each Bishop and Abbot who attended his funeral had to emancipate three slaves and give each one 3 solidi.[60]

One of the very few "abolitionist" texts that are available from this period is provided by the Benedictine Abbot Smaragdus of Saint-Mihiel (d. *circa* 830 A.D.) in a book addressed to the Emperor Louis the Pious:

> O most merciful king, command that there be no prisoners of war in your kingdom... People should obey God and His commandments to the extent that they possibly can; and among these various salutary precepts and good works is that, of his great charity, every man should let his slaves go free, in consideration of the fact that it was not nature but sin which subjected such slaves to him, for we are all created of equal status but sin has subjected some people to others; and also in consideration of the fact that if one forgives, one will be forgiven... [61]

At about the same time in the East St. Theodore the Studite is leaving a testament to his monks in

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[58] *Regula Monachorum*, c.19, n.4. MPL 83, 889.
[59] Canon 67. Mansi 10, 632. *C.J.C. Decret. Grat.* II, C.XII, Q.II, c.39. *Decretal. Greg. IX.* L.III, T.XIII, c.4.
[60] Canon 10. Mansi 14, 359.
[61] *Via Regia*, c.XXX. MPL 102, 967-8.

which he writes that they should possess no slave – someone made in the image of God – either for their own personal service or for the service of the monastery or to work in the fields: for this is allowed only for lay people, like marriage.[62]

At the Council of Armagh in 1117 A.D. the Irish Bishops ordered that in every part of Ireland the English slaves should be emancipated.[63]

(*iv*) (8) *Conclusion*

By the end of the twelfth century there are evidently two main discordant traditions in the Western Church so that the influence of Christianity on the institution of slavery appears ambivalent. First, under the influence of fundamentalist exegesis of *Gen.* IX 25–27 and of the apostolic "household-codes", and due to the influence of the principle of continuity of doctrine which inhibited Church Councils from revising or abrogating ancient Church laws which no longer had application in a Christian Empire or Christian Kingdoms, the Church appeared to uphold the doctrine that slaves should remain enslaved to their masters. On the other hand, partly under the influence of Pauline teaching that slaves and masters are equally brethren in Christ, the Church actively promoted the doctrine that slaves should be emancipated by their masters. In an era when Christians lived under absolute imperialisms or monarchies, there is only one recorded attempt to petition the Emperor to revise his law on enslavement.

Very simply, the over-emphasis of a fundamentalist interpretation of St. Paul's "moral theology" of slavery tends towards sterile legalism. On the other hand, the emphasis on St. Paul's "dogmatic theology" of slavery leads logically to the manumission of Christian slaves.

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(62) *Testament*, n.4. MPG 99, 1817.
(63) Mansi 22, 123-4.

(v) The influence of Greek philosophy and Roman law on the formulation of the common Catholic teaching concerning slavery, from late twelfth century to mid-fifteenth century

This is a vast historical canvas. It will only be possible to provide some outline sketches of the teaching of a few theologians during this period, of a few uses of enslavement as ecclesiastical penalties by Popes and Councils, and of a few points of slavery-legislation in one country. The period ends when Negro slaves began to be captured from the Canary Islands and West Africa by Portuguese adventurers.

(v) (1) *The influence of Aristotle and Roman civil law on theologians, c.*1200–*c.*1300.

Aristotle's philosophy, translated from Arabic sources in Spain, was introduced into the universities of Western Europe at the beginning of this period. His views on slavery continued to influence theologians until the sixteenth century so they deserve quotation:

> . . . it is clearly natural and beneficial to the body that it should be ruled by the soul. . . Tame animals have a better nature than wild, and it is better for all such animals that they should be ruled by man because they then get the benefit of preservation. . . We may thus conclude that all men who differ from others as much as the body differs from the soul, or an animal from a man. . . all such are by nature slaves, and it is better for them. . . to be ruled by a master. A man is thus by nature a slave if he is capable of becoming. . . the property of another, and if he participates in reason to the extent of apprehending it in another, though destitute of it himself. . . But the use which is made of the slave diverges but little from the use made of tame animals; both he and they supply their owner with bodily help in meeting his daily requirements. . . It is thus clear that, just as some are by nature free, so others are by nature slaves, and for these latter the condition of slavery is both beneficial and just.[64]

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[64] *Politics*, L.I, c.5. Translated by Ernest Barker, Oxford, 1946, 11-14.

For Aristotle and his thirteenth century commentators slavery could clearly be regarded as an existing symbiotic relationship between master and slave from which both parties derived benefits, on the one side preservation, on the other side bodily help, but at the expense of the dehumanization of the slave.

Besides Aristotelian philosophy, Roman civil law also began to be studied in European universities at the beginning of this period. The chief legal causes for which free persons could be enslaved, and thus the legal titles by which they could be held in ownership, continued to be quoted by moralists until the time of the second Vatican Council, so they deserve mention here:

Captives: Prisoners captured in war became slaves, whether members of fighting forces or civilians of the enemy country. Such prisoners became the property of the State, and might subsequently be set free or sold at public auction.[65] By the twelfth century it had become a custom of war in Christendom that this rule only applied to unbaptized prisoners – in practice only to Moslems, who became the slaves of their Christian captors, in the same way that Christian prisoners became the slaves of Moslem captors.

Penal enslavement: As already noted above (iv) (5), the capital punishment of slavery was lifelong. It commonly took the form of work in mines.[66]

A judgement debtor might ultimately be sold into slavery.[67]

Voluntary sale of children by destitute parents: It had been an ancient rule that this was forbidden; since the fourth century the sale of a newborn child was treated as valid, subject to certain conditions.[68]

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[65] Inst. I, 3, 4; 49, 15, 12, pr.; 49, 15, 24; 48, 13, 15.
[66] 48, 19, 2, pr.; 48, 1, 2.
[67] Aul. Gell. 20, 1, 47.
[68] P, 5, 1, 1.

Voluntary self-sale by destitute paupers: It had been a rule that a freeman over 20 years of age could knowingly allow himself to be sold as a slave in order to share the price, if the buyer believed him to be a slave.[69]

Birth from a slave-mother, whatever the status of the father: This was said to be a rule of the *jus gentium* and was in practice the commonest title of slave-ownership.[70]

The study of Roman civil law also taught that freedom is natural to mankind and that slavery is contrary to nature, see (ii) above.

Slave markets flourished during this period in certain cities in the countries which received Roman civil law, and indeed continued to function at least until the seventeenth century.

St Thomas Aquinas in mid-thirteenth century accepted the new Aristotelian view of slavery as well as the titles of slave-ownership derived from Roman civil law, and attempted – without complete success – to reconcile them with Christian patristic tradition.

He takes the patristic theme, (iv) (3) above, that slavery is a consequence of original sin and says that it exists according to the "second intention" of nature; it would not have existed in the state of original innocence according to the "first intention" of nature; in this way he can explain the Aristotelian teaching that some people are slaves "by nature", like inanimate instruments, because of their personal sins; for since the slave cannot work for his own benefit slavery is necessarily a punishment.[71] He accepts the symbiotic master-slave relationship as being mutually beneficial.[72] There should be no pun-

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[69] C. 7, 18, 1; 40, 12, 7, pr.; 2, 33.
[70] Ulp. 5, 9-10; C.3, 32, 7; D. 1, 5, 24.
[71] *In II Sent.* d.44, q.1, a.3; *in IV Sent.* d.36, q.1, a.1, ad 2; *S.T.* III Suppl. q.52, a.1, ad 2; *S.T.* I, q.96, a.4.
[72] *S.T.* II - II, q.57, a.3, ad 2; *S.T.* I - II, q.94, a.5, ad 3.

ishment without some crime, so slavery as a penalty is a matter of positive law.[73] So quite illogically – by his own explanations – he nevertheless accepts the moral legitimacy of the title of birth from a slave-mother, although the slave-offspring is guilty of no personal sin.[74]

St. Bonaventure (d.1274) expounds this same patristic theme concerning slavery as an infamous penalty for sin; but he likewise sees no theological difficulty in the Roman legal title of birth from a slave-mother. He writes that it is not merely by human institution but even by divine dispensation that amongst Christians there are kings and princes, masters and slaves.[75]

Duns Scotus (d. 1308) is much more discerning and critical concerning both Aristotelian teaching and the titles of slave-ownership in Roman law. He starts from the premise that slavery as a penalty is against the law of nature. He admits only two causes of slavery as morally acceptable, namely, voluntary self-sale and penal enslavement by the State. He rejects the title of enslavement by capture in war as being inhuman. He accepts the Aristotelian view that servitude is natural for some people only if such servitude means domestic service but not if it means chattel-slavery. He rejects the acquisition of slaves by prescriptive rights since slaves are not real estate. Most important of all, he recognizes that the apostolic teaching that slaves should obey their masters does not imply any approval of the justice of the institution of slavery.[76]

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[73] *In IV Sent.* d. 36, q.1, a.1.
[74] *S.T.* III Suppl. q.52, a.4.
[75] *In II Sent.* d.44, a.3, q.1, *conclusio*. See also numerous references under *Servitus* in general index, *Opera Omnia*, Quaracchi edn.
[76] *In IV Sent.* d.36, q.1.

(v) (2) *Slavery is imposed as an ecclesiastical penalty by General Councils and local Church Councils and Popes*, 1179–1535.

The disciplinary decrees of Church Councils made use of penal enslavement for 900 years, from 633 to 1535 A.D., see (iv) (5) above, though these decrees were no longer effective after about the mid-fifteenth century.

(*a*) *The crime of assisting the Saracens*, 1179–1450.

By the middle of the tenth century or earlier there had developed a trade in captured Slavs, some of them Christians, from Bulgaria and Macedonia, who were transported to Moorish slave-markets in Southern Spain and sold there as eunuchs (Arabic sakâliba, whence "esclavo"). During the centuries of warfare between Moslems and Christians in the Mediterranean area, both sides at one time or another carried out slave-raids with galleys to capture prisoners of war. The matter was extremely serious for Christians living in the coastal towns, and in 1179 the third General Council of the Lateran imposed enslavement as a penalty for any Christian who was captured while providing the Saracens with materials for repairing their galleys or even piloting them for financial gain.[77] This decree became part of the general law of the Western Church, and was subsequently re-enacted by the disciplinary decrees of three other General Councils, [78] as well as by at least eight papal briefs and local councils during the subsequent 270 years. Since by custom in Christendom only non-Christian prisoners of war could be enslaved, these ecclesiastical canons amounted to enactments that Christian renegades who were captured in war while assisting the Saracens should be treated as non-Christians.

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[77] Canon 24. *C.J.C. Decret. Greg. IX*, L.V, t.VI, c.6.

[78] 4th Lateran in 1215; *Constitutio de expeditione pro terra sancta recuperanda;* 1st Lyons in 1245, can. 18; 2nd Lyons in 1274, can. 32.

(*b*) *The crime of selling Christian slaves to the Saracens*, 1425.

Pope Martin V issued two Constitutions in which he condemned Christians and others who were buying Christian slaves of the Greek rite and selling them to non-Christians.[79] Traffic in Christian slaves was not forbidden, but only their sale to non-Christian masters in whose ownership their Christian faith and morals would be endangered.

(*c*) *The crime of brigandage in the Pyrenean mountainous districts*, 1179.

The third General Council of the Lateran was also concerned with suppressing brigandage in the Pyrenees and recommended that Christian princes be invited to police these areas using the sanction of enslavement.[80]

(*d*) *Unjust aggression or other crimes*, 1309–1535.

The penalty of exposure to capture and enslavement for Christian families or cities or states was enacted several times by Popes. Those sentenced in this way included the Venetians in 1309, 1483 and 1509, the Florentines in 1376, the Colonna family in 1526, and finally King Henry VIII of England in 1535 after the execution of Bishop John Fisher and Sir Thomas More.[81] In effect, these ecclesiastical sanctions amounted to a declaration that the offending Christians and their supporters, because of their personal or collective crimes, were no longer to be treated as Christians, and that any Christian Prince was at liberty – or even exhorted – to execute the Papal sentence upon them by making war upon them and enslaving those who were captured.

(*v*) (3) *The influence of canon law and Roman civil law on Spanish legislation, thirteenth to fourteenth centuries.*

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[79] *Bullar. Rom.* (Taur. edn.) IV, 718-9.
[80] Canon 27.
[81] Typographia Vaticana (1606), 7, 11, 13-15; Raynaldus XXVI 280; *Bullar. dipl. et priv. Rom. Pont.* (1860-8), VI, 195.

In 1265 A.D. there was published in Spain, by the authority of King Alfonso the Wise, the legislation known as *Las Siete Partidas.* [82] Enslavement by capture as prisoner of war and subsequent ransom in the war between Christians and Moslems had given Spaniards a practical experience of slavery which found expression in the following text:

> Slavery is the most vile and most despicable thing that can exist among men. Because by it, a man who is the most noble and most free of all the creatures that God made is put into the power of another man in such fashion that the latter can do with him what he pleases, just as he can with any other of his property, living or dead. And so despicable a thing is this slavery that the man who is reduced to it not only loses the power of doing with his own what he pleases, but even has no power over his own person, except in so far as his master commands.[83]

Las Siete Partidas followed Roman jurisprudence in prescribing that judges should favour freedom, because it is the friend of nature and is loved by men, whereas slavery is something which men naturally abhor.[84] But this Spanish civil legislation also followed canon law in so far as it reinforced the decree of the ninth Council of Toledo in 655 A.D., (iv) (5) above, which imposed the penalty of enslavement upon the unfortunate children of priests who offended against clerical celibacy.[85] It also followed canon law by reinforcing the conciliar legislation which imposed enslavement on Christians who assisted the Moors, (v) (2) (*a*) above.[86]

(vi) The practical application in West Africa and Latin America of the common Catholic teaching concerning slavery, fifteenth to sixteenth centuries.

The slave-raiding of West Africa by Christians in the fifteenth century and the discovery of America

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[82] Entered into force in 1348 by the *Ordenamiento de Alcalá.*
[83] Introducción al Tit. V, Partida IV.
[84] Regla I y II, Tit. XXXIV, Partida VII.
[85] Ley III, Tit. XXI, Partida IV.
[86] Ley IV, Tit. XXI, Partida IV.

in 1492 marked the beginning of the vast practical moral issues of Negro slavery, the Negro slave trade and the enslavement of the American Indians, where the common Catholic teaching concerning slavery found expression in Papal documents, Royal decrees, and theological opinions.

(*vi*) (1) *Papal condemnations of unjust enslavement of Christians and catechumens by Christian slave-raiders*, 1433–1571.

The demand for galley-slaves, especially in times of active hostilities between Saracens and Christians, tended to outrun the supply. This was one of the main reasons why the slave-trade of European and Arab slaves had continued to flourish among the maritime mediterranean cities, as a lucrative occupation for slave-raiders and slave traders, both Christian and Moslem. Under the existing rules of war, both Christian and Moslem slave-raiders would enslave their prisoners. Christian slave-raiders who attempted to use the newly-discovered and newly-converted inhabitants of the Canary Islands as a source of supply of slaves earned a reprimand from Pope Eugenius IV in 1433 and 1435 and the censure of excommunication was imposed upon those guilty of this crime.[87]

In 1456 some Christians who were raiding the coasts of Turkey and Egypt had captured, enslaved, and sold into slavery not only Moslems but also some Christians. Those guilty of this crime were denounced and excommunicated by Pope Calixtus III.[88]

In 1462, in a letter addressed to a Bishop who was setting out for Portuguese Guinea, Pope Pius II directed ecclesiastical censures against "wicked

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[87] Raynaldus, XXVIII, year 1436, nn.25, 26.
[88] Raynaldus, XXIX, 94, n.65.

Christians who were taking the recently baptized adult converts away into slavery".[89]

In 1476 Pope Sixtus IV anathematized Christian slave-raiders who out of avarice were reducing the recent adult Christian converts of the Canary Islands to slavery and hindering the work of the missionaries, and he authorized the Papal Internuncio there to inflict ecclesiastical penalties upon them.[90]

Finally, about the time of the Battle of Lepanto in 1571, Pope St. Pius V excommunicated those in the Christian fleet who were guilty of capturing, despoiling and enslaving other Christians and forcing them to row as galley-slaves in their triremes.[91]

It should be noted that in all these cases the Christian slave-raiders were censured because their enslavement of prisoners had been unjust, firstly because their prisoners were *not* Saracens, and Christendom was at war only with the Moslem Saracens, and secondly because their prisoners *were* Christians in countries which were not at war, and it was a custom of war in Christendom that no Christian prisoners of war should ever be enslaved.

(*vi*) (2) *Papal grants to the Kings of Portugal, giving authority to enslave the "Saracens" and other non-Christians of West Africa with whom Christendom is at war*, 1452–1514.

In 1442 a Portuguese captain brought to the Gold Coast some Moorish prisoners of war, exchanged them for ten Negro slaves, and brought these back to Lisbon. A trading settlement was established at Lagos by 1444. It would appear that by 1452 the Portuguese were anxious to establish their property-rights over their newly discovered West African

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[89] Raynaldus, XXIX, 342, n.42.
[90] Raynaldus, XXIX, 575, n. 21.
[91] *Motu Proprio. Magn. Bull. Rom.*, Luxembourg, 1727 II, 384, n.149.

territories, and so Pope Nicholas V was approached and was apparently led to believe that these territories of the "Guinea Coast" were inhabited by "Saracens" and other enemies of Christendom. There is no other explanation of a series of Papal documents which applied the well known contemporary rules of war to the situation in West Africa – where, as the Portuguese were well aware, the local Negro inhabitants were not Saracens, were not Moslems, and were not the enemies of Christendom.

In 1452 Pope Nicholas V addressed a Brief to King Alfonso V of Portugal which included the following words:

> . . . justly desiring that whatsoever concerns the integrity and spread of the faith, for which Christ our God shed his blood, shall flourish in the virtuous souls of the faithful. . . we grant to you by these present documents, with our Apostolic Authority, full and free permission to invade, search out, capture and subjugate the Saracens and pagans and any other unbelievers and enemies of Christ wherever they may be, as well as their kingdoms, duchies, counties, principalities, and other property. . . and to reduce their persons into perpetual slavery, and to apply and appropriate and convert to the use and profit of yourself and your successors, the Kings of Portugal, in perpetuity, the above-mentioned kingdoms, duchies, counties, principalities, and other property and possessions and suchlike goods. . . [92]

Two years later, in 1454, Pope Nicholas V explicitly confirmed every word of his previous Brief in a longer one addressed to King Alfonso V.[93] The Pope wished to reward the Portuguese for their warfare against the Saracens and infidels, for their conquest of Saracen kingdoms and territories even when these were in far distant and hitherto unknown

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[92] Brief *Dum Diversas*, June 16, 1452. Raynaldus (1747 edn.) IX. year 1452, 600, n.11.

[93] Brief *Romanus Pontifex*, January 8, 1454. Raynaldus, XXIX, year 1454, nn.8 and 9. (An earlier version, similar in text, is dated the previous day). Hernáez (F.X.); *Colección de Bulas y Breves*. Bruxelles, 1879, II, 824.

areas, and for subjecting them to the Portuguese Crown for the sake of the preservation and spread of the Christian Faith. The text of this document shows that the Pope had been led to believe that the great river which flows to the "Guinea Coast" (the Senegal) was commonly reputed to be the Nile, that the coast was inhabited by pagans and Saracens, that the local inhabitants might be taught ship-building and sailing by the enemies of Portugal and so the missionary enterprise and military strategy against the Saracens might be hindered. The Pope had been informed that many local Negro inhabitants had already been made prisoner by force, other Negro slaves had been obtained by lawful barter or purchase, and these had been sent back to Portugal where a number had been converted to the Catholic faith. And so, exercising his *plenitudo potestatis*, the Pope renewed his previous permission to conquer, expropriate and enslave the Saracens and pagans of those territories, and extended the rights of conquest and permissions previously granted not only to the territories already acquired but also to those which might be acquired in the future. The Pope renewed the ecclesiastical law against giving material assistance to the Saracens together with the penalties (enslavement on capture) for those who infringed this law, (v) (2) (a) above.

In 1456, Pope Calixtus III confirmed these grants to the Kings of Portugal, [94] and they were renewed again by Pope Sixtus IV in 1481; [95] finally in 1514 Pope Leo X repeated verbatim all these documents and approved, renewed and confirmed them. [96]

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[94] Brief *Inter Caetera*, March 15, 1456. Hernáez, II, 829.
[95] Brief *Aeterni Regis*, June 21, 1481. Hernáez II, 830.
[96] Brief *Praecelsae Devotionis*, November 3, 1514 *Bullarium Collectio... Jus Patronatus*, Lisboa, 1707, 53. *Corpo Diplomatico Portuguez...* Academia Real de Sciencias de Lisboa, Lisboa, 1862, 298.

In conclusion, these Popes could only have addressed these documents to the Kings of Portugal if they had been led by the Portuguese to believe that the military situation in West Africa was an extension of the military conditions already existing in the Mediterranean, and therefore that the rules of war which applied in the Mediterranean in the unending conflict between Christians and Saracens would also apply in the relations between the Portuguese and the West African Negroes. If a fifteenth century canonist had been informed of this misrepresentation of facts by the Portuguese it is likely that he would have been of the opinion that this grant of permissions, etc., through the Pope's exercise of his *plenitudo potestatis* was therefore null and void.

(*vi*) (3) *Papal grant to the Kings of Spain, giving authority to enslave the "Saracens" and other non-Christians of America with whom Christendom is at war, 1493.*

There was a significant phrase in the Brief of Pope Nicholas V to King Alfonso V in 1454 which extended the rights of conquest and permissions previously granted not only to the territories already acquired but also to those which might be acquired in the future. After the discovery of America in 1492, Ferdinand and Isabella of Spain were foresighted enough to see that if Spain did not receive from the Pope in regard to the American "Indies" the same authority and permissions which Portugal had received in regard to West Africa, then Spain would be at a disadvantage in making use of her newly discovered territories.

Accordingly Pope Alexander VI was approached and already on May 3, 1493, he issued two Bulls on the same day in both of which he extended the identical favours, permissions, etc. granted to the

Monarchy of Portugal in respect of West Africa to the Monarchy of Spain in respect of America.[97] This act of his *plenitudo potestatis* was precisely in order not to show partiality either to Portugal or Spain; and both Monarchies received the identical authority to treat their newly discovered territory in the same way that they could receive authority from the Pope to treat, say, Turkey or Egypt; that is to say, they received "full and free permission to invade, search out, capture and subjugate the Saracens and pagans and any other unbelievers and enemies of Christ wherever they may be, as well as their kingdoms, duchies, counties, principalities and other property... and to reduce their persons into perpetual slavery." In other words, it would appear that, in effect, Portugal and Spain were understood by the Holy See to be at war with the enemies of Christendom – the Negroes of West Africa and the "Indians" of America – wherever they may be.

(*vi*) (4) *Spanish Royal edicts authorizing the just enslavement of hostile American Indian tribes and prohibiting the unjust enslavement of American Indians, 1503–1541.*

Ferdinand and Isabella of Spain certainly hoped that their conquest of the New World would be peaceful and would achieve the spread of the Catholic faith by peaceable means. But having received authority from the Pope to wage a just war against the enemies of the faith they and their successors in the sixteenth century were prepared to exercise this authority.

In 1503 Queen Isabella issued a Royal edict or letters patent to the effect that cannibal Indians who

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[97] Bulls *Eximiae Devotionis* and *Inter Caetera* both dated May 3, 1493. García Gallo (A.): "Las Bulas de Alejandro VI". *Anuario de Historia del Derecho Español*, Madrid, 27/28 (1957-8) 808-810. Versions of *Inter Caetera* dated May 4, 1493, do not contain the vital paragraph extending to Spain the grants previously received by Portugal.

resisted conversion might be taken prisoner, although hitherto it had been the rule that this was forbidden.[98]

In 1512 Queen Joanna likewise authorized war to be made on the hostile Carib tribes of the West Indian islands and for prisoners to be enslaved although this was contrary to the general rule of peaceful penetration and conversion.[99]

In 1514 an expedition of 12 or 15 ships was due to set out from Spain for the West Indies, and in 1513 the Commander, Pedrarias, was provided by Royal authority with a document called the *Requerimiento* (Requisition) which had to be read to hostile Indians by a notary.[100] This *Requerimiento* was prepared by the jurist Palacios Rubios and was intended to explain to the Indians the theory of the temporal power of St. Peter and the Popes elaborated by Cardinal de Susa (Ostiense) in the thirteenth century. The Indians were to be informed that the Pope had donated their territory to the Spanish King Fernando and his daughter Queen Joanna whom they should accept as their sovereigns, and they should allow the missionaries to preach to them, and in due course they should freely accept the Catholic faith. If they refused to accept the sovereignty of the Spanish monarchy, then war would be made against them, and they and their wives and children would be captured, enslaved, and sold or disposed of.

The obligation of reading the *Requerimiento* was mentioned in subsequent Royal edicts in 1523, 1528 and 1541, which gave authority for war to be made

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[98] *Cedulario Cubano*, 1493-1512, ed. Chacón y Calvo (J.M.,) Madrid, 1927, n.XII, 49-52.

[99] Zavala (S.A.): *Las instituciones jurídicas de la Conquista de América*, Madrid, 1935, Doc. VI, 315-7.

[100] Hanke (Lewis): "The Requerimiento and its interpreters." *Revista de Historia de América*, 1 (March 1938) 26-28.

upon hostile Indian tribes and for prisoners to be enslaved.[101]

The Royal authority for the military conquest of Yucatán in 1526 included a paragraph empowering Francisco de Montejo to make slaves of rebellious Indians.[102]

The above Royal edicts are of importance here because they reflect the views of contemporary Catholic canonists, lawyers and theologians in Spain, since the Spanish Monarchy made scrupulous efforts to follow the contemporary common Catholic teaching concerning slavery.

There are, of course, numerous Spanish Royal edicts during this same period, 1503 to 1541, which prohibit the unjust enslavement of Indians, and which direct that Indians unjustly enslaved should be liberated, and that Indians should be paid for their work.[103] The most important Royal edict is one from Charles V dated August 2, 1530, in which he prohibited henceforth *all* enslavement of Indians, even those captured in just warfare, and even those bought from the Indians by the Christians.[104] He suspended all previous permissions to enslave Indians and declared that in future no Indian might be enslaved for any reason or cause. Unfortunately, this anti-slavery policy did not last long, and on February 20, 1534, he revoked this edict and once more authorized the enslavement of Indian prisoners captured in just warfare.[105] A Royal edict of 1530 noted the fact that the Indians themselves had the

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(101) *Cedulario Indiano*, ed. Encinas (D. de), 1596, IV, 361, 363. Zavala, *op. cit.*, Doc. VII, 317-8.
(102) Zavala, *op. cit.*, Doc. III, 292.
(103) *Cedulario Cubano*, n.XIX (1503); *Cedulario Indiano*, IV 362, (1526), IV 373 (1540), IV 366 (1541), IV 367 (1541); Colección de Muñoz, M. S. tom 78 (1528); Zavala, *op. cit.*, Doc. III 293-9 (1526).
(104) Zavala, *op. cit.*, Doc. X 325-7; *Cedulario Indiano*, IV 364-5.
(105) Zavala, *op. cit.*, 252-4.

custom of enslaving other Indians captured in inter-tribal warfare.[106]

Two relevant points have been noted by historians. First, at any given time, each of the Spanish colonies is at a different state of progress and development, and the Royal edicts concerning slavery which are in full force in one colony are entirely disregarded in another.[107] And secondly, the custom was that if the administration of a new Royal edict was judged to be difficult or dangerous, the Viceroy or Governor would solemnly place it upon his head as a mark of acknowledgement and respect, but declare at the same time that its execution remained suspended.[108]

(*vi*) (5) *Moral approval of the justice of warfare against hostile American Indians and their enslavement as prisoners of war, 1513–1545.*

The obligation of reading the *Requerimiento* through interpreters to the American Indians was insisted upon by Charles V in the *Provisión de Granada* of 1526;[109] and as mentioned above, it was still required to be read even in 1541. The best commentary upon the *Requerimiento* is the one provided by the author Palacios Rubios himself, who in 1514 published a book addressed to King Fernando. He explained that both spiritual and temporal powers of jurisdiction were possessed by Christ as King over the whole world; these were transferred by Christ to St. Peter and to his successors, the Popes; the Popes granted spiritual jurisdiction to prelates of the Church and temporal power to Emperors and Monarchs and other temporal lords; jurisdiction was granted to non-believers by

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(106) *Cedulario Indiano*, IV 364.
(107) Helps (Arthur): *The Spanish Conquest in America and its relation to the history of slavery* . . . London, Vol. III, 1857, 130-1.
(108) Ots Capdequí (J.M.): *El estado español en las Indias*. México, 3rd edn. 1959, 13-15.
(109) Zavala, *op. cit.*, Doc. III 296.

tacit consent of the Church, as long as it was not possible for the Church to exercise it through her own ministers; but the Church can discontinue this tacit consent wholly or in part whenever she chooses;[110] yet non-believers in Christianity should be tolerated by the Church since she cannot compel them to accept the faith, and they will be competent to have jurisdiction as soon as they recognize the authority of the Church.[111]

Palacios Rubios explained how the common teaching of the Church concerning slavery was involved in this doctrine of the temporal power of the Pope: non-believers in Christianity, living in peace and ignorant of the temporal power of the Pope and of Christian Princes, may not be deprived of their territory and property which they hold by tacit consent of the Church; so a war of conquest by Christian Princes on non-believers, solely on account of their non-belief, would be unjust, and the self-defence of the non-believers would be just and they might even lawfully enslave their captured unjust Christian aggressors.[112] For self-defence is permitted by the natural law. So while the West Indian Islanders delay in informing themselves about the purpose of the Christian Spanish King who invades them, they may justly defend themselves, and any Indians taken prisoner would not justly become the slaves of their Spanish captors. But as soon as the truth is made known to them [by reading the *Requerimiento*], concerning the temporal power of the Pope over the whole world, and concerning the fact that the Pope has chosen to donate the province where they live to the Spanish King whom they are now bound to obey as divinely appointed

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[110] Ostiense: *Comment. in Decretal.* L.III, t.34, c.8.
[111] Lopez de Palacios Rubios (Juan): *De las islas del mar océano*. Trad. A. Millares Carlo, México, 1954, cap.4, §8, pp. 107-112.
[112] *Op. cit.* cap. 3, §1, p.45.

guardian of the Church, and concerning the mysteries of the faith and their state of subjection to the Church whose preachers they are bound to receive, then they should at once give up their own opinions and assent to the truth. After allowing a prudent interval so that the Indians can make up their minds, then if they refuse to accept the truth, they may justly be attacked by force of arms, their property seized, and they themselves reduced to slavery. Or if the Indians refuse to accept the preachers of the faith, it is lawful to have recourse to armed warfare until they do admit them.[113]

After explaining his case, based on the doctrine of Ostiense, Palacios Rubios concludes lamely by admitting that the Indians did not in fact lose their original freedom and become enslaved on the grounds of refusing to accept preachers of the gospel or by putting up a resistance to the Spaniards, because as soon as the truth was made known to them they in fact immediately accepted the Christian preachers. And so in order to justify the past enslavement of the Indians he has to have recourse to the philosophy of Aristotle, and explain that some of them were foolish and incapable of governing themselves, and so can be called slaves in the Aristotelian sense (*Politics*. L.I, c.5), as being born to serve masters who are knowledgeable.[114]

At about the same time or even earlier (1512) similar views concerning the Spanish colonial rulership over American Indians were expressed by a professor of theology at Salamanca. He held that if an invitation to accept Christianity had not been made, the American Indians as non-believers might justly defend themselves, even though the Spanish King, motivated by Christian zeal and supported

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(113) *Op. cit.* cap, 2, pp. 34-38.
(114) *Op. cit.* cap. 2, p.38.

by Papal authority, had waged just war. Such non-believers might not be held as slaves unless they pertinaciously denied obedience to the Spanish Monarchy or refused to accept Christianity.[115]

In 1539 Vitoria was considering the titles of the Spanish Monarchy to occupy the territory of non-believers. He regarded the Spaniards as ambassadors of Christians, and ambassadors by the *jus gentium* are inviolable, therefore the non-believers are bound at least to listen to them politely and not reject them. If non-believers allow Spaniards to make peaceful negotiations with them, then Spaniards have no cause for taking away their possessions. But if the non-believers are hostile, then the Spaniards may wage just war and exercise the rights of war by despoiling them and taking them prisoner, and following the rules of Roman civil law, even enslaving them.[116]

Finally Sepúlveda (d. 1573), like Palacios Rubios before him, includes a reference to Aristotelian philosophy to provide one of the grounds which justify the Spanish war on the American Indians. In 1545, mentioning the Papal decree which authorized this war, Sepúlveda explained that although the American Indians are by nature slaves, barbarians, uncivilized and inhuman, they reject the rulership of the more prudent, powerful and perfect Spaniards which they should accept for their own benefit.[117]

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[115] Matías de Paz O.P.: *Del Dominio de los Reyes de España sobre los Indios*. Trad. A. Millares Carlo, México, 1954, Conclusion 1, corollary 2, q.2.

[116] Maestro Fray Francisco de Vitoria: *Relecciones Teológicas*. Edición crítica por L.G. Alonso Getino, Madrid, 1934, II, Relección 1, 8, Concl. 7, 366-8.

[117] Sepúlveda (J.G. de): *Democrates Segundo – o de las justas causas de la guerra contra los indios*. Trad. A. Losada, Madrid, 1951, 83-85.

(VI) (6) Condemnation of the injustice of the enslavement of the American Indians, 1511-1552.

A modern writer, Gonzalez Alonso Getino, has drawn attention to the history of the depopulation and even extinction of primitive races and cultures when brought into contact with European customs and diseases, and he alludes to other instances besides that of the aboriginal American Indians. He insists that no small credit is due to the Portuguese and Spanish missionaries for reporting what they observed of the rapid depopulation, and for making urgent recommendations to prevent the complete extinction of the Indian tribes.[118]

The missionaries could observe at first hand the disastrous effects on American Indian tribes of the Pope's donation of their territories to the Portuguese and Spanish monarchs, together with the application in practice of the common Catholic teaching concerning the title of slave-ownership of non-Christians by capture in a just war. They did not question the theory of the universal temporal power of the Pope, nor did they question the moral legitimacy of the institution of slavery. Instead of which they either objected to the enslavement of the Indians on humanitarian grounds – that they were unable to survive the rigours of the European type of slavery. Or else they rejected the justice of the wars against the Indians and consequently the justice of their enslavement as prisoners of war. Or they rejected the justice of acquiring from Indians their own Indian slaves since the latter were not truly slaves by European standards.

Bartolomé de las Casas records in his own words the sermon of Father Antón Montesino on Christmas Eve, 1511, at Concepción de la Vega in the Island of Hispaniola, in the presence of Admiral

(118) "Influencia de los Domínicos en las Leyes Nuevas." *Anuario de Estudios Americanos*, 2 (1945) 353 sq. Apéndice II.

Diego Colón and some officers of the Crown. The sermon is an attack on the mortal sinfulness of the Spanish colonists in unjustly, cruelly and barbarously enslaving the innocent American Indians, overworking them, starving them, and failing to instruct them in the Catholic faith.[119] Las Casas admits that not one of the congregation was converted, and that the effect was merely to secure the recall of Father Montesino to Spain.

About 1516, 10 Dominican and 13 Franciscan missionaries sent a joint letter to the Royal Regent in Spain, Cardinal Jímenez de Cisneros, reporting the crimes and cruelties perpetrated by the Spaniards in Hispaniola against the Indians, who were already almost exterminated by the sword, hunger, cold, rain, damp and overwork in mining to extract gold.[120]

There is an informative letter sent in 1536 to the Viceroy by Juan de Zumárraga, the first Bishop of México, in reply to two queries. As to whether it is just to hold slaves purchased from the Indians, he replies that he knows of no law, divine, natural, positive, human, ecclesiastical or civil whereby the natives of México should lose their freedom in this way and become the slaves of the Spaniards. And secondly as to whether prisoners of war should be enslaved, he replies that if he had the authority he would ensure that this could not occur, by forbidding the Spaniards to make war upon the Indians except in self-defence.[121]

As Bishop of Chiapa, Bartolomé de las Casas wrote in 1547 a treatise on the slavery of the American Indians which was published in Spain in 1552.[122] He argued that all the Indians whom

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[119] *Historia de las Indias*. L.III, c.3, c.4.
[120] Gonzalez Alonso Getino (L.) O.P.: *op. cit.*, 353 sq.
[121] García Icazbalceta: *Don Fray Juan de Zumárraga*. México, 1881. Apéndice de documentos inéditos, núm. 32, 151.
[122] *El Indio Esclavo*, Sevilla, 1552, 4-6.

the Spaniards held as slaves should be set at liberty, including those acquired from the Indians themselves, since they had all been unjustly enslaved, and most of the Spaniards held them in bad faith. The reason is that of all the titles of slave-ownership in the Indies, the least unjust is that of capture in war; and even this title is defective since the Spaniards never waged a just war against the Indians, for they never had a just cause for making war, and never had the authority of the King for doing so. From the evidence given above, (vi)(4), Las Casas is clearly mistaken in his repeated statement that the Spanish monarchy never authorized war to be made against the Indians and that consequently the title of holding Indian slaves as captured prisoners of war was unjust. Accepting as he did the contemporary common teaching concerning the power of the Pope to authorize Christian monarchs to wage just warfare, and accepting the common teaching concerning the moral legitimacy of the institution of slavery, Las Casas had found what was for him a rational explanation of the injustices of the Spanish colonial institution of Indian slavery. But Sepúlveda had good grounds for accusing Las Casas of exaggeration and of embroidering falsehood with truth.[122a]

Holding such views on the justice of the Spanish wars against the Indians, Las Casas also wrote in 1547 a handbook for confessors of Spanish penitents in the Indies. This included rules for hearing the deathbed confessions of penitents who had taken part in the wars, those who had held Indians in their Repartimientos, and those who had sold arms and stores to the soldiers.[123] Before hearing the confes-

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[122a] Sepúlveda (J.G.de): *De rebus gestis Caroli Quinti Imperatoris et Regis Hispaniae*. L. XXI, c.31.

[123] *Unos Avisos y Reglas para los confesores*. Sevilla, 1552. Regla I, IX. Biblioteca de Autores Españoles, Tomo CX, Madrid, 1958, Opusculo XXVI, 236, 240-1.

sion a notary had to be called. Penitents who held Indians as slaves, no matter by what title, were required forthwith to set them all at liberty by a public declaration, and ask their pardon for the injury done to them by enslavement, and make restitution to them by payment for their past work and services, since every single one had been unjustly enslaved. And he concludes ironically that if any Indian is aware that he is truly a slave, or was enslaved in a war which the Indians fought against each other and which was just according to their laws, then these rules were not to be understood as referring to him. By a Royal Edict of November 28, 1548, the Council of the Indies ordered that all copies of this handbook should be collected in; it would appear that the Council regarded it as a subversive attack upon the justice of the wars of conquest and the system of Repartimiento.

(*vi*) (7) *Opinions concerning the justice of the enslavement of Negroes in West Africa, 1550–1571.*

The questioning of the justice of the enslavement of the American Indians in the first half of the sixteenth century was followed in due course in the second half of the sixteenth century by a questioning of the justice of the enslavement of the non-Christian African Negroes. Prior to this date the justice of their enslavement as prisoners of war, or by purchase from African monarchs or slave-traders, was taken for granted. Here, as in the case of the American Indian slaves, divergent views were expressed. And again the criterion of just enslavement, to be applied in West Africa as in America, was the criterion of the titles of Roman civil law.

In mid-sixteenth century Sepúlveda has recourse to Aristotelian theory to support the title of capture of Africans in just warfare by the Portuguese Christians; for the Africans deserve the state of

subjection since they are disobedient by nature and need paternal rulership and tolerate it with a light heart.[124]

In 1553 King Philip II consulted six theologians concerning the moral lawfulness of a Royal licence granted to Hernando Ochoa, banker to the Royal household, to transport 23,000 Negro slaves to the West Indies and America for a payment of eight ducats per slave to the King or his nominee. Their report is informative by what it omits, namely, consideration of the justice of the enslavement of the Negroes, and by what it includes, namely consideration of the justice of a state monopoly and of the rate of profit to Hernando Ochoa.[125]

At about the same time, de Soto was rejecting the argument that the Africans were benefiting from enslavement by being converted to Christianity; he insisted that the faith must be accepted with the fullest freedom.[126]

In 1560 the Archbishop of México, Alonso de Montufar, is writing to the King of Spain that he does not know what reason there should be for making the Negroes prisoners of war rather than the Indians, since the former receive the Gospel with goodwill and do not make war on Christians.[127]

In a treatise on trading and contracts, Mercado considers in 1571 the Negro slave trade from Cape Verde by the Portuguese. He explicitly takes for granted the sovereignty of the Portuguese King, at least in the coastal region. He accepts that there are sufficient reasons and causes whereby a person can be justly enslaved and sold, and describes the three

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[124] *De Regno et Regis Officio*. L.III, n.15.
[125] Cereceda (F.): *Un asiento de esclavos para América el año 1553*. Missionalia Hispánica, Madrid, 3 (1946) 580-597.
[126] *De Justitia et Jure*. L.IV., q.2.
[127] Zavala (S.A.): *Ensayos sobre la colonización española en América*, Buenos Aires, 1944, 116.

titles in Roman civil law, capture in war, penalty for crime, and sale of children into slavery by destitute parents; and he accepts that these three titles are sufficient to enslave Negroes in Guinea, and so the buying and selling of Negroes at Cape Verde is in principle lawful and just. But in the barter, procuring and transport of the Negroes to the Indies, thousands of frauds, thefts and crimes are committed; and he describes in detail some of the gross injustices, cruelties and enormities committed by the Portuguese and Spaniards as well as by the Negro traders on the Guinea coast in order to be able to claim one of the above three titles to slave-ownership. And he concludes that the practice of slave-trading is mortally sinful because many of the Negroes are enslaved by crime and violence.[128]

(vii) The teaching and decrees of the Holy See concerning slavery, sixteenth to nineteenth centuries.

The continuity of the common Catholic teaching concerning slavery during this period can be illustrated not only by what the Popes and Councils and theologians taught but also by what the Popes and Councils decreed that the Catholic princes and clergy and laity should or should not do in the way of slave-holding and slave-trading.

(*vii*) (1) *Papal and conciliar denunciations of enslavement of American Indians and of slave-trading in non-Christian African Negroes, 1537–1839*

On May 29, 1537, Pope Paul III wrote an Apostolic Brief to Cardinal Juan de Tavera, Archbishop of Toledo, the capital city of Spain. The Pope had come to hear that King Charles V had prohibited all his subjects by public edict from reducing the Western and Southern American Indians into slavery, or daring to deprive them of their posses-

[128] *Suma de tratos y contratos*, Sevilla, 1571, L.II, c.20.

sions. This was a reference to the truly anti-slavery Royal edict of August 2, 1530, see (*vi*) (4) above. And so the Pope writes to the Cardinal to say that although the Indians are non-Christians, they have not been deprived [i.e. by a juridical act of the Papacy] of their freedom or of ownership of their own possessions, nor are they to be deprived of these. They are not to be exterminated by slavery, but are to be invited to Christian life by preaching and example. The Cardinal is commanded by the Pope to provide an effective defence for the Indians in this matter, and to forbid all Spaniards to reduce the Indians into slavery by any means whatsoever or deprive them of their possessions in any manner, under pain of excommunication if they do so.[129] The Pope clearly approved the Royal edict which had prohibited enslavement of American Indians by any one of the titles of Roman civil law. But the Pope had evidently not been informed that this Royal edict had already been abrogated on February 20, 1534, by a subsequent edict which had once more authorized the enslavement of Indian prisoners captured in just warfare, (*vi*) (4) above. Charles V was irritated by the Papal Brief to the Cardinal, and advised the Pope to annul it, since it was injurious to the Imperial right of colonization and harmful to the peace of the Indies. So Pope Paul III duly annulled *Pastorale Officium* on June 19, 1538, by the Brief *Non Indecens Videtur*.[130]

Meanwhile, however, four days after writing *Pastorale Officium* to the Cardinal Archbishop of Toledo, Pope Paul III on June 2, 1537, addressed

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[129] Brief *Pastorale Officium*. (Another version dated June 2, 1537, has a few minor verbal variants.) Denziger-Schönmetzer (1964) n. 1495. It is a pity that Denziger quotes a document which was annulled a year after its publication.

[130] *Cassatio litterarum in forma brevis eiusdem Pontificis, per quas oriri poterat perturbatio Indiarum occidentalium et meridionalium*. Archiv. Segr. Vat., arm, 41, t.10, epist. 543.

a Bull *Sublimis Deus* to all the Christian faithful.[131] This document emphasized a point which *Pastorale Officium* had also noted, namely that the American Indians were human, and therefore capable of receiving the Faith and being saved. The Pope is replying to the upholders of a diabolical theory that the Indians are subhuman and therefore may be enslaved like brute animals. He repeats the teaching of *Pastorale Officium* that although the Indians are non-Christians, they have not been deprived and are not to be deprived of their freedom or of the ownership of their own possessions. They may freely and lawfully use, possess and enjoy their freedom and ownership of property, and should not be reduced to slavery. And if anything has happened to the contrary, it is null and void. The Indians and other peoples are to be invited to the Faith of Christ by preaching the word of God and by the example of a good life.

Commentating upon the papal documents referring to the enslavement of the Indians, Diego de Avendaño is at pains to prove that there is continuity of doctrine between the Briefs of Nicholas V in 1452 and Calixtus III in 1456 on the one hand, (*vi*) (2) above, and the teaching of Paul III in 1537.[132] For Paul III did not contradict the common Catholic teaching that the enslavement of hostile non-Christian Indians by right of capture in just war is in conformity with natural law, the *jus gentium* and Christian customary law. However it may be prohibited by Royal edict. But if the Indians behave as the enemies of Christendom, they may be treated like Moors and Turks. And even the

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[131] Remesal (A.de): *Historia General de las Indias*. Madrid, 1619, L.III, c.16. Another version *Veritas Ipse* omits the first paragraph of *Sublimis Deus*, and contains minor verbal variants. Hernáez I, 102-3.

[132] *Thesaurus Indicus, sive Generalis Instructor pro regimine conscientiae in iis quae ad Indias spectant*. Antwerp, 1668, I, Tit. I, c.XI, §§1-2.

putting down of a rebellion of the Indians provides a sufficient title for enslavement in just warfare. And so Avendaño concludes that in such circumstances the Indians can still sometimes be reduced to slavery with a safe conscience.

It is probable that between 1514 and 1537 the Holy See came to realize that it had made an error in pastoral and missionary practice in granting to the Kings of Portugal and Spain the right of conquest by war over the territories of the American Indians, since, as Pope Paul III hinted to the Cardinal Archbishop of Toledo, the Indians were being alienated from Christianity by the injustices and injuries which they suffered at the hands of their Christian conquerors.

The Brief *Cum sicuti* of April 18, 1591, which Pope Gregory XIV addressed to the Bishop of Manila shows that many of the Spaniards of the Philippine Islands appreciated that they had a duty of making restitution to the Indians for the injuries and damage to property which the latter had suffered at their hands.[133] Following the terms of a Royal edict the Pope orders on pain of excommunication the emancipation of all Indian slaves held by the Spaniards in the Philippines.

A Council in the Island of Dominica in 1622 prohibited unjust warfare against the Indians.[134] Avaricious for booty, many Spaniards had been extracting from the Governors a licence to make war against Indians on the pretext of punishing evildoers; harmless and innocent Indians had been unjustly captured and taken from their homes, so that the others learned such a horror of the name of Christian that they took refuge in caves and mountain strongholds where they died of hunger,

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(133) Hernáez I, 108-9.

(134) Sess. VI, c.IX, §VI. Utrera (C. de): *El Concilio Dominicano de 1622*. Santo Domingo, 1940, 77.

cold and hardship. Such slave-raiding in future incurs excommunication, the Indians are to be returned at liberty to their land; and the slave-trading or donation of Indians captured even in just warfare also incurs excommunication.

In 1537 and 1591 Paul III and Gregory XIV had been able to forbid on pain of excommunication all enslavement of American Indians by reason of any of the titles of Roman civil law because a previous Royal edict had already prohibited all such enslavement. (Actually, as mentioned above, the Spanish Royal edict of 1530 had already been revoked by the time the Briefs of 1537 were published.) In this way any conflict between civil and ecclesiastical courts was avoided. But neither of these Popes intended to contradict the common Catholic teaching concerning the moral legitimacy of the title of enslavement by capture in just warfare.

Although the previous Portuguese Royal edict is not to hand, it is presumably for this same reason of preserving harmony between the civil and ecclesiastical courts that in 1639 by the Brief *Commissum Nobis* Pope Urban VIII was able to command the Collector General of Dues of the Apostolic Camera in Portugal to forbid on pain of excommunication all enslavement of the Indians of Paraguay, Brazil and the neighbourhood of the river Plate by reason of any pretext or title whatsoever, as well as all slave-trading in Indians.[135] But by this Brief, Urban VIII in no way contradicted the common Catholic teaching concerning the moral legitimacy of the title of enslavement by capture in just warfare. He reinforced the authority of the civil arm with ecclesiastical sanctions for the sake of the spiritual welfare of the Indians. He condemned the unjust enslavement of Indians by impious

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[135] April 22, 1639. Hernáez I, 109-110.

Portuguese Christians who alienated the Indians from Christianity by their inhuman behaviour.

The same applies to the Brief *Immensa Pastorum* of December 20, 1741, addressed by Pope Benedict XIV to the Bishops of Brazil and other dominions subject to King John of Portugal in the West Indies and America.[136] The Pope is concerned with the spiritual welfare of the Indians. He condemns the unjust enslavement of Indians, both non-Christian and Christian, as well as their inhuman maltreatment by Portuguese Christians which turns the Indians away from the Faith and hardens them in the greatest hatred of it. He repeats the directions and prohibitions and ecclesiastical censures of the Briefs of Paul III and Urban VIII and renews and confirms them.

It is noticeable that not one of this series of Papal Briefs makes any reference to the enslavement of the Negroes in West Africa nor to the transatlantic trade in Negro slaves. It was not until the nineteenth century, after the European exploration of the continent of Africa and after first-hand descriptions of the sufferings of African slaves had become widely known, that this omission was rectified. Pope Pius VII, after appeals from Lord Castlereagh in London through Cardinal Consalvi and Cardinal Pacca, agreed to support the efforts of the international lawyers and statesmen at the Congress of Vienna in 1815 who were aiming at the abolition of the international trade in Negro slaves.[137]

Finally by the Constitution *In Supremo Apostolatus* of December 3, 1839, Pope Gregory XVI condemned the current practice of the Negro slave

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[136] Hernáez I, 112-3.

[137] Letters: Consalvi a Pacca, Londra, 5 luglio 1814. Consalvi a Pacca da Parigi, a 25 di luglio 1815. Archiv. Vatic. Congresso di Vienna, 1814, 1815.

trade as unchristian and morally unlawful.[138] He refers to the moral teaching of the Apostles concerning the duties of slaves and masters, as well as to the Christian practice of treating Christian slaves as brothers and emancipating them. After references to a few of the documents of earlier Popes he solemnly forbids any of the faithful in future unjustly to molest or despoil or enslave Indians, Negroes, or suchlike people, or contrary to the laws of justice and humanity to engage in the Negro slave trade in which, no matter how they were enslaved, the Negroes are treated as mere animals and put to carry out the most arduous labours. It is clear that the Pope is condemning unjust enslavement and unjust slave-trading. There is no contradiction of the common Catholic teaching concerning just enslavement and just slave-trading. And there is no excommunication of those who carried on this unjust Negro slave trade.

(*vii*) (2) *Papal decrees concerning the institution of slavery in the city of Rome, 1535–1566.*

In Rome, a very ancient privilege of the magistrates (*conservatori*) to emancipate slaves who fled to the Capitol and appealed for their liberty had long since lapsed, and in 1535 Pope Paul III decided to renew it. Exercising his *plenitudo potestatis* he granted the *conservatori* full power to emancipate all slaves who fled to the office of the Senate chamber of Rome and appealed for their liberty.[139]

However, after some years, on account of the reduced number of slaves in Rome and its surrounding area, the *conservatori* petitioned the Pope in 1544 and again in April 1548 to moderate the provisions

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[138] Hernáez, I 114-6.

[139] *Motu Proprio*, June 28, 1535. *Statutorum Almae Urbis Romae .... libri quinque . . . item liber sextus Bullarum*, Rome, 1567, 18(B)-19(A).

of his grant of 1535, and they prepared public enactments abolishing this custom of emancipation and asserting the lawfulness of owning slaves and forcing them to work. Pope Paul III, a year before his death, approved and confirmed these civil enactments, and with his Apostolic authority he revoked the privilege of the *conservatori* in this matter, and declared the lawfulness of slave-trading and slave-holding, including the holding of Christian slaves, in Rome:

> . . . By reason of our pastoral office, we gladly attend to the troubles [due to the lack of slaves] of individual Christians, as far as we can with God's help; and having regard to the fact that the effect of a multitude of slaves is that inherited estates are enriched, agricultural property is better looked after and cities are extended, and desiring to provide security against loss for the people as well as their profit, of our own free will we approve and confirm the above-mentioned enactments and orders. . . ; and nevertheless, as a greater precaution [we decree] that each and every person of either sex, whether Roman or non-Roman, whether secular or clerical, and no matter of what dignity, status, degree, order or condition they be, may freely and lawfully buy and sell publicly any slaves whatsoever of either sex, and make contracts about them as is accustomed to be done in other places, and publicly hold them as slaves and make use of their work, and compel them to do the work assigned to them. And with Apostolic authority, by the tenor of these present documents, we enact and decree in perpetuity that slaves who flee to the Capitol and appeal for their liberty shall in no wise be freed from the bondage of their servitude, but that notwithstanding their flight and appeal of this sort they shall be returned in slavery to their owners, and if it seems proper they shall be punished as runaways; and we very strictly forbid our beloved sons who for the time being are *conservatori* of the said city to presume by their authority to emancipate the aforesaid slaves – who flee as previously described and appeal for their liberty – from the bondage of their slavery, irrespective of whether they were made Christians after enslavement, or whether they were born in slavery even from Christian slave parents according to the provisions of the common law. . . [140]

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[140] *Motu Proprio*, November 9, 1548. "Confirmatio Statutorum populi Romani super restitutione servorum in Urbe". *Statutorum Almae Urbis Romae* . . . Rome, 1567, VI, 19(B).

In January 1549 the *conservatori* published in Italian in Rome their decree authorizing all persons whatsoever in Rome to hold and buy and sell slaves.[141]

In 1566 Pope St. Pius V restored to the *conservatori* of Rome their privilege and authority to emancipate baptized slaves who fled to the Capitol and appealed for their liberty.[142]

(*vii*) (3) *Papal involvement in the use of Moslem galley slaves in the galleys of the Pontifical squadron, 1629–1788.*

There are records which show that from the fifteenth to the eighteenth centuries some of the Popes were personally involved in the purchase and use of galley-slaves for the Pontifical squadron in the almost continuous warfare with Saracens or Turks. In general, galley-slaves could be, firstly, convicted criminals condemned to a life sentence who would normally never be released, or criminals sentenced for a period of time who would be released after serving their sentence; secondly, captured non-Christian prisoners of war who could be ransomed; and thirdly, *bonavoglie*, so-called "volunteers", who through indigence had sold themselves into slavery, and could be released at the end of their contracted period of service in the galleys on condition of good conduct.

In 1629 Pope Urban VIII wrote to his Treasurer General, Monsignor Durazzi, instructing him to buy the 40 privately owned slaves who were rowing in the galleys of the Papal squadron as *bonavoglie* at the prices at which they had already been valued,

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[141] January 12, 1549. *Bando sopra la tener de li schiavi et schiave in Roma.*

[142] *Motu Proprio* ". . . confirmationis privilegiorum populo Romano ac Almae Urbis conservatoribus super liberatione mancipiorum seu sclavorum baptizatorum ad eos confugientium concessorum." September 9, 1566. *Bollario*, 1586, Romae, apud Haeredes Antonii Bladii, impressores camerales, II, n.18.

namely, 15 slaves belonging to Francesco Centurione at 130 scudi each, 15 others belonging to various owners at 100 scudi each, and 10 belonging to Captain Gozzadino at 70 scudi each, and he ordered that in future no privately owned slaves were to be accepted as *bonavoglie* in the Papal galleys.[143]

In 1645 at the time of a flare-up of the perpetual warfare at sea between the Turks and Christians, when the Turks had made a successful reprisal attack upon Crete, there was a shortage of galley-slaves for the Papal squadron; Pope Innocent X wrote personally to his Treasurer General, Monsignor Lorenzo Raggi, to say that he had authorized Prince Nicolo Ludovisi, the *Generale* of the Papal galleys, to purchase 100 Turkish slaves.[144] The following year Pope Innocent X wrote to Monsignor Raggi authorizing payment from the Papal treasury for slaves and stores bought for the galleys.[145]

In 1661 the Knights of Malta had recently captured 600 prisoners in the Levant, and Archbishop Nereo Corsini, the Papal Treasurer, wrote on behalf of Pope Alexander VII to Monsignor Casanata, the Inquisitor in Malta, to assist the negotiations for the purchase of 100 slaves for the Pontifical galleys in exchange either for cash or for timber for building galleys.[146]

During the seventeenth and eighteenth centuries a series of records indicate that numbers of Moslem

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[143] Letter dated January 31, 1629. R. Chirografi, 1628-1630, fol. 126; e. R. Id. 1627-1629, fol. 192-3; Bertolotti (Antonino): *La Schiavitù in Roma dal secolo XVI al XIX*, Roma (1887), 21.

[144] Letter dated July 8, 1645. Collezione di Chirografi originali sciolti, in Bertolotti, *op. cit.*, 22.

[145] Letter dated August 14, 1646. R. Chirografi, 1645-55, fol. 85 e 93; Bertolotti, *op. cit.*, 22-23.

[146] Guglielmotti (Alberto) O.P.: *Storia della Marina Pontificia*, Rome, Vatican, (1886-1893), VIII 259; Dal Pozzo (Bartolomeo) *Historia della Sacra Religione militare di S. Giovanni Gerosolimitano detta di Malta*, Verona-Venezia (1703-1715), II, 297. In the event, the 100 slaves were exchanged for 10,000 scudi worth of timber.

galley-slaves in the Papal squadron were ransomed, apparently by wealthy Turks, and that in some cases the petition to the Pope for their release included an offer to provide one or more other Turkish slaves who were experienced at the oars to take their place.[147]

(*vii*) (4) *The Holy Office on slavery in West Africa, 1686, and Ethiopia, 1866.*

In 1686 the Holy Office was concerned with the justice of the Negro slave markets and published some replies for the guidance of Catholics who were engaged in the Negro slave-trade.[148] In general, Catholic traders must discriminate between Negroes who have been justly enslaved and those who have been unjustly enslaved. The capture by force or fraud and subsequent trade in harmless and innocent Negroes and others who live in forest regions is morally unlawful. Traders who hold such unjustly enslaved persons are bound to emancipate them and make compensation to them for the injuries they have sustained. If purchasers suspect that some of those offered for sale are unjustly enslaved, they are bound to inquire about the justice of the title by which they are held.

In 1866 the Holy Office issued an Instruction in reply to questions from a Vicar Apostolic of the Galla tribe in Ethiopia.[149] This document includes a contemporary theological exposition of morally legitimate slavery and slave-trading:

> . . . slavery itself, considered as such in its essential nature, is not at all contrary to the natural and divine law, and there can be several just titles of slavery and these are referred to by approved theologians and commentators of the sacred canons. For the sort of ownership which a slave-

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[147] Bertolotti, *op. cit.*, 23-32; Guglielmotti, *op. cit.* IX, 94-7.
[148] March 20, 1686. *Collectanea S.C. de Propaganda Fide*, 1907, Rome, I, n.230, 76-7.
[149] June 20, 1866. *Op. cit.* n. 1293, 719.

owner has over a slave is understood as nothing other than the perpetual right of disposing of the work of a slave for one's own benefit – services which it is right for one human being to provide for another. From this it follows that it is not contrary to the natural and divine law for a slave to be sold, bought, exchanged or donated, provided that in this sale, purchase, exchange or gift, the due conditions are strictly observed which the approved authors likewise describe and explain. Among these conditions the most important ones are that the purchaser should carefully examine whether the slave who is put up for sale has been justly or unjustly deprived of his liberty, and that the vendor should do nothing which might endanger the life, virtue or Catholic faith of the slave who is to be transferred to another's possession.

In answer to a question from the Vicar Apostolic the Holy Office replied that Christians may lawfully acquire slaves by purchase or gift provided that they have been justly enslaved. If they have been unjustly enslaved but nevertheless refuse to be sold or given to Christians, they may not be purchased or accepted, for their freewill must be respected. If they have been unjustly enslaved and freely offer themselves to be the slaves of Christian masters under a milder form of slavery as the only means of escaping from their present harsh form of slavery, and as a means of coming to know about Christian worship, they may be acquired and held as slaves by Christians by just title (*e.g.* purchase), provided that they are treated with Christian charity and instructed in the rudiments of the faith with a view to their conversion to Christianity by their own free choice.

(viii) The explanations by moralists of questions relating to the common Catholic teaching concerning slavery, sixteenth century to 1958.

At least 80 of the moralists who wrote text-books or manuals on moral theology during the last 400 years up to the second Vatican Council deal specifically and occasionally at great length with the subject of slavery. They consider it either in relation to the question of ownership of property, ownership of

one human being by another, or in connexion with the duties of inferiors to superiors, of slaves to masters. The continuity of teaching or repetition of thought is remarkable; there is very little development of ideas. Some of the moralists expound in detail various aspects which are here omitted, such as the treatment of runaway slaves, etc. It is only possible here to summarize a few of the themes which occupy their attention.

(*viii*) (1) *Elucidation of the legal title of enslavement by capture in warfare, 1539–1600.*

Vitoria is concerned in 1539 to answer the problem of the justice of enslaving innocent non-Christians, especially innocent children, in warfare. He is thinking of Saracen women and children who were enslaved by Christians in the never-ending wars. He replies that freedom and captivity are counted among the good or evil things of fortune – presumably meaning that it is a matter of fortune whether one is born free or a slave. The Saracens can never make reparation for the injuries and harm they have caused to Christians. In these circumstances it is lawful to despoil indiscriminately all the enemy and take possession of all enemy property, and to take all the enemy prisoner and enslave them, whether guilty or innocent.[150] Half a century later, Molina repeats this opinion of Vitoria almost word for word.[151]

In mid-sixteenth century Vazquez de Menchaca, a pupil of Soto and Vitoria, tries realistically to justify the common practice whereby, in a war involving non-Christians, both sides would always enslave prisoners, although in theory it could hardly

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[150] Maestro Fray Francisco de Vitoria: *Relecciones Teológicas.* Edición crítica por L.G. Alonso Getino, Madrid, 1934, II, Del derecho de Guerra, 42, Tercera duda, 424-5.

[151] *De Justitia et Jure.* 1593. I.2. D.120.1.

ever happen that the war would be just for both sides. He explains that the motive of the *jus gentium* in permitting enslavement as a means of saving prisoners of war from massacre is valid both for an unjust as well as a just war. And so in his opinion, enslavement in an unjust war provides a lawful title of slave-ownership. In any case soldiers cannot know that their side is fighting an unjust war unless it has been declared such, and in practice they may assume that it is just if the war has been declared by their sovereign authority.[152]

At the end of the sixteenth century Suarez was teaching that the enslavement of prisoners of war, said to derive from the *jus gentium*, is in fact a man-made penal law; consequently like all customary laws it is changeable; this explains how this part of the *jus gentium* has been changed in Christendom so that Christian prisoners of war are not enslaved by Christian nations when at war with each other.[153]

(*viii*) (2) *Elucidation of the legal title of birth from a slave mother, 1744–1900.*

A difficulty for a number of more recent moralists was the moral justification of the legal title of birth from a slave-mother. From the time of St. Augustine in 425 A.D., see (*iv*) (3) above, there had been no satisfactory explanation as to how or why the children of a slave-mother should justly incur the penalty of slavery. They had committed no crime. They were not members of an aggressor nation who had been justly captured in war. They had not been sold into slavery by the voluntary action of destitute parents. In 1744 Laymann suggests that since a slave-mother is withdrawn from service to her

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(152) *Controversiarum illustrium aliarumque usu frequentium* . . . Trad. de Rodríguez Alcalde. Valladolid, 1931-5. L.I, c.9, nn. 14-15.
(153) *De Legibus*, L.II, c.XVII, 8 and c.XX, 8.

master during the time of child-bearing and may even die in child-birth, the master can be regarded as being fairly compensated for the loss of the slave-mother's work-time and even of her life, by becoming the owner in perpetuity of her offspring.[154] As for the enslaved innocent children of parents captured in just warfare, Amort suggests that the parents are being justly punished for their own crimes by observing the unhappiness of their children.[155] In mid-nineteenth century the moral philosopher Schiffini could not accept the moral legitimacy by the natural law alone of the title of birth from a slave-mother since the offspring are not the property of the parents and consequently escape becoming the property of the master. But he accepted that this title was not unjust wherever it was established by positive law, on the grounds firstly of the moral unity between children and parents, secondly of compensation by the children themselves for expenses incurred by the master in educating them since their parents cannot pay such compensation, and thirdly on the ground of the impossibility of suddenly abolishing universal custom.[156] At the end of the nineteenth century the moral philosopher Theodor Meyer finds it difficult to accept this title as inherently legitimate and just. As for the argument that the master acquires a right to the servitude of the offspring of slave-mothers on the grounds of compensation for the food and care he has expended on the child from its birth, Meyer holds that it cannot be proved from the natural law alone that this payment of compensation should be perpetual.[157]

(*viii*) (3) *The question whether slavery is contrary to nature, 1550–1800.*

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(154) *Theologiae Moralis Compendium*, 1744, L.III, sect. V, tr.I, c.V, n.9.
(155) *Theologia eclectica*. 1752. I, disp. III, quaestiunculae, nn.17, 18.
(156) *Disputationes Philosophiae Moralis*. 1891. II. n.407, 305-6.
(157) *Institutiones Juris Naturalis*. II. 1900. n.123 (5).

This was an age-old problem. Masters and slaves shared the same human nature, but it is a fallen human nature as a consequence of original sin, see (*iv*) (2) and (3) above. The study of Aristotle's philosophy in Western Europe in the early middle ages introduced the idea that (in modern jargon) "inadequate personalities" or primitive peoples are slaves by nature and are born such, see (*v*) (1) above; while at the same time the introduction of Roman civil law preserved the tradition of the jurists of antiquity that freedom is natural to mankind and that slavery is contrary to nature, see (ii) above.

Soto (d. 1560) accepts St. Thomas' explanation, see (*v*) (1) above, that slavery is contrary to the first intention of nature in the state of original innocence, but is in conformity with the second intention of nature corrupted by sin. [158] Molina (d.1600) reconciles this explanation with Roman civil law by saying that in the first disposition of things slavery was contrary to nature, but that in the later circumstances slavery was fully deserved. [159] Azor (d.1603) explains further that the sort of natural slavery described by Aristotle is part of the *jus gentium* and is in conformity with nature; however the chattel-slavery of republican Roman civil law is also part of the *jus gentium* but is contrary to nature since the masters could tyrannize over their slaves, and this chattel-slavery was corrected and amended by later Imperial decrees. [160] Lessius at the beginning of the seventeenth century explains that in the state of original innocence slavery would have been contrary to nature and unjust; but in the state of fallen human nature it is not contrary to reason and is just, in the same way that to make use of medicines

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(158) *Commentarii in IV Sent.*, Dist. 35, q.1, a.3, ad. 2.
(159) *De Justitia et Jure*, Tract, II, disp. 32.
(160) *Institutiones Moralium*, III, I, cap. 4, "De jure gentium".

and to afflict people with torture are contrary to the original constitution of nature, but granted the presence of disease and sin, they are now not contrary to reason.[161] St. Thomas' explanation of slavery continued to be expounded at least until the end of the eighteenth century.[162]

(*viii*) (4) *The question whether the moral legitimacy of the institution of slavery can be shown from Holy Scripture, sixteenth century to eighteenth century.*

There was no doubt in the minds of the moralists of this period that it was evident from Holy Scripture that slavery was not contrary to divine law. The texts which were most frequently cited as sources to show the moral lawfulness of the institution of slavery and slave-trading were: *Ex.* XXI 2–11, *Lev.* XXV 39–55, *Deut.* XXI 10–14, *I Cor.* VII 20–24, *Ephes.* VI 5–9, *Col.* III 22–IV 1, *I Tim.* VI 1–2, *Titus* II 9-10, *Philem.* 8-21, *I Pet.* II 18-25. There was no appreciation or understanding in this era that any of the above New Testament texts might be historically or culturally conditioned to the time and place of the sacred writer; it was taken for granted that they were inspired statements of universal validity for all times and places, and for all social and cultural conditions of mankind.[163]

In particular, there was no appreciation of the distinction, see (iii) above, that St. Paul taught on the one hand a "dogmatic theology" concerning slavery ("slaves and masters, when you have been baptized, you are brethren in Christ"); and on the other hand a "moral theology" of slavery which

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[161] *De Justitia et Jure*, 1606, L.II, c.4, dub. 9.

[162] For example, Gerdil (G.S.): Theologia Moralis. *Opere Edite e Inedite* (1806-21). Vol. XVII. *De Justitia et Jure*. L.III, c.VI, propositio 3.

[163] "In the same way" (*I Pet.* III 1) the moralists made a comparable exegesis of scriptural texts in order to "prove" the inequality of women in relation to men and the duty of wives to be subject to their husbands, *e.g. Gen.* III 16; *I Cor.* XI 3-10, XIV 34-35; *Ephes.* V 23; *I Tim.* II 9-15; *I Pet.* III 1-6.

was adapted to, and valid in, the legal situation of the Roman empire in his day ("slaves – obey your masters as you would obey your Master, Christ; masters – look after your slaves with fairness and justice; masters and slaves – make use of your legal relationship to grow in Christian virtues").

(*viii*) (5) *The question whether it is de fide that the institution of slavery is morally legitimate, seventeenth century.*

At this time it was a tenable theological opinion that the moral legitimacy of "legal slavery", that is, slave-holding by one of the titles of Roman civil law, could not be denied without prejudice to the Catholic faith. This was taught by Rebellus (who followed Azor) in 1608.[164] Later in the same century Castropalao taught that it is *de fide* from Scripture and the Church canons that legal slavery is morally lawful.[165] And in this he was soon followed by Leander,[166] the Diffinitor General of the Trinitarian Order which had been founded originally for the ransoming of Christian captives from the Moors.

However this was not the theological note which was commonly attached to this point of Catholic moral teaching. The moralists of this and later periods commonly restricted themselves to proving that the institution of slavery is not contrary to the natural law, not contrary to divine law, and not contrary to ecclesiastical law.[167]

(*viii*) (6) *The question whether it is a duty of masters to emancipate their slaves, seventeenth century.*

In answer to the question whether it is a work of

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[164] *Opus de obligationibus justitiae, religionis et caritatis*, L.I, q.9.
[165] *De virtutibus et vitiis contrariis.* Pars. VII, Tr. XXXI, disp. I, punctum IX, nn.1-2.
[166] *Quaestiones morales theologicae.* 1668-92. VIII. Tr. IV, disp. I, q.3.
[167] For example: Tournély (H.): *Tractatus de universa theologia moralis.* 1733. I. Tr. I, pars II, c.III, a.4; Collet (P.): *Institutiones Theologiae Moralis.* 1768. III. c.II, sect. I, *conclusio* 5; Billuart (C.R.): *Summa S. Thomae . . . sive Cursus Theologiae*, 1829. XI. dissert. III, a.II.

piety to emancipate slaves, it was an opinion repeated by a number of seventeenth century moralists that usually it is not. The reason given was that although Roman law favours liberty nevertheless most of the slaves are wicked or with evil inclinations or doltish, and so they would become lazy and turn to thieving and end their lives in prison or on the gallows. It would be a pious and useful work to emancipate them only if they are good and can earn their own living by their work.[168]

(*viii*) (7) *The distinction between chattel-slavery which is morally unjust and an ameliorated slavery which is morally legitimate, 1633–1958.*

In the early seventeenth century a philosophical distinction was introduced in order to answer the objection that God alone can have absolute ownership over the personality of a slave, including his soul and body, his life and limbs. In 1633 Filliucius was explaining that masters have the right to the work of their slaves, the sort of work that a reasonable man expects, as well as the right to all that they produce, including the offspring of the slave-women, but they have no rights over their slaves' lives or limbs or physical or spiritual welfare.[169] This distinction was soon explained as the radical difference between unjust chattel-slavery in which the master had full rights of ownership over the slave as his personal property, and a just Christian slavery in which the master merely had a right of use, a *dominium utile*, a perpetual right of disposing of the work of his slave for his own benefit. This distinction,

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[168] For example: Trullench (I.A.): *Opus Morale sive in Decalogi praecepta expositio.* 1640. II. L.V., c.2, dub.6, n.9: Torrecilla (M. de): *Suma de todas las materias morales.* 1696. I. Tr. III, disp. II, c.I, Secc. VI, n.150; Diana (A.): *Omnium Resolution um Moralium.* 1698. Tr. VIII, Resol. XXV.

[169] *Quaestionum Moralium de Christianis Officiis.* II. Tr. XXXI, c.4, nn.123-4.

as already seen above (vii) (4), was made use of by the Holy Office in 1866. It was useful in practice, because it emphasized that Christian masters had the duty of respecting the life and marriage and personal property (*peculium*) and reputation of their slaves; but the metaphysical distinction between the person and acts of the slave failed to explain the facts; for under the law, when a master bought or sold a slave, he did not merely buy or sell the right to dispose of the work of the slave, he bought or sold the person himself. The law was realistic in so far as it recognized that a person is truly inalienable from his acts or work, and that the person of the slave could be transferred against his will to another master for a sum of money. Because of this philosophical theory the nineteenth century moralists provided an explanation which they called "alienation": the ameliorated slavery under a Christian master who merely owns the "right of use" over his slaves is morally legitimate because the slaves alienate their work and activity into the ownership of their master, who in this way is able to "use" the bodies and limbs of his slaves for his own benefit.[170]

This distinction between a chattel-slavery which is morally unjust and an ameliorated slavery which is morally legitimate was part of the common teaching of the moralists in the eighteenth century,[171] through the nineteenth century, [172] and indeed

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[170] For example Lyonnet (D.): *Appendix Prima ad Tractatum de Justitia et Jure*, I, a.3, in Migne: *Theologiae Cursus Completus*, 1839-45, XV, 843-5; Gury (J.P.): *Compendium Theologiae Moralis*, 1868, I, n.539; Konings (A.): *Theologia Moralis*, 1890, I, n.595; Bucceroni (J.): *Institutiones Theologiae Moralis*, 1892, I, nn.15,17.

[171] For example Contenson (V.de): *Theologia mentis et cordis*, III, 1770; *De Justitia et Jure*, cap.V.

[172] For example, Carrière (J.); *Praelectiones Theologicae de Justitia et Jure*, 1839, I, n.44; Ballerini — Palmieri: *Opus Theologicum in Busenbaum Medullam*, 1890, III, *De Justitia et Jure*, pars I, c.II, n.64.

during the twentieth century until the time of the second Vatican Council.[173]

(ix) The gradual appreciation of the existence of errors in the common Catholic teaching on slavery, leading to their long-delayed official correction, 1573-1965.

The archives of the Holy Office (now the sacred Congregation for the Doctrine of the Faith) in Rome could undoubtedly provide much valuable source-material for the history of moral theology in this field. But until these archives are put at the disposal of some competent commission of inquiry, as suggested at the beginning of this book, it will not be possible to do more than summarize a small part of the existing published material.

(*ix*) (1) *The gradual emergence of a Catholic theological opinion critical of the common teaching concerning slavery, 1573–1638.*

In 1573 Bartolomé de Albornoz published in Spanish a work on contracts in which he included a section on slavery.[174] After describing the Negro slave-trade in West Africa, he refers to Mercado, see (*vi*) (7) above, and states that he fails to understand the reasonableness of the three causes of enslavement in West Africa which Mercado mentions, namely capture in war, penalty for crime, and sale of children into slavery by destitute parents. He says that the first of these is not just according to Aristotle and even less according to Jesus Christ; when war is waged between public enemies there is room for enslavement in the devil's own law. As regards women and children who can be guilty of no crime, and those sold because of destitution, he finds no convincing reason which persuades him to approve

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[173] For example Prümmer (D.M.): *Manuale Theologiae Moralis*, II, 1945, n.11; Zalba (M.): *Theologiae Moralis Compendium*, I, 1958, nn.1710-1.

[174] *Arte de los contratos*. Valencia, 1573, fols. 130-1.

of these causes of enslavement. And referring to the argument that it is better for the Negroes to be carried off as slaves to other countries where they can live rationally rather than live in freedom in their own country in bestial fashion, Albornoz replies that this would only be true if a Negro could not become a Christian without becoming a slave; but he does not believe that it is written in the law of Jesus Christ that the freedom of the soul has to be paid for with the slavery of the body.

However, this book on contracts by Albornoz, for one reason or another, was placed on the Index of Prohibited Books by the Holy Office.

A few years later, in 1576, Jean Bodin, the French philosopher and political writer, objected to the common Catholic teaching concerning the title of enslavement of non-Christians by capture in war. In this, though he did not know it, he was only following the opinion of Duns Scotus 300 years previously, see (*v*) (1) above. He mocks the "charity" of soldiers who spare the lives of those whom they have not killed and suggests that their motive is gain and profit. The settlement of the quarrels of Princes by "just warfare" is supposed to show that the victor is in the right whereas he is merely stronger, while the vanquished is supposed to be in the wrong whereas he is merely weaker.[175]

Bodin's reputation as a philosopher was such that his attack on the common Catholic teaching demanded a reply, and Marquez[176] and Solórzano[177] set out to reply to his objections and re-state the common teaching.

At the end of the sixteenth century, Salon mentions that some of the contemporary Trinitarians (a

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(175) *Les Six Livres de la République.* L.I., c.5.
(176) *El Governador Christiano.* 1619. L.I., c.2.
(177) *Disputatio de Jure Indiarum.* 1629-39. I. L.III, c.7.

religious order dedicated to the ransoming of slaves) were teaching, like the Anabaptists, the heretical opinion that amongst Christians it was wrong for masters to have slaves in the legal and civil institution of slavery, and they were supporting this heresy with texts from Holy Scripture and St. Augustine.[178] Salon summarizes six of their arguments and refutes them one by one.[179] It is difficult to form a judgment on the opinions of the Trinitarians from these brief summaries, but it is noticeable that there is no reference here to the all-important Pauline doctrine that masters and slaves are brethren in Christ, see (iii) above. It would be interesting if the archivists of the Trinitarian Order could give us a full account of these opinions of their sixteenth century brethren.

At the beginning of the seventeenth century the French lawyer and canon, Pierre Charron, followed Bodin in his critical attitude towards slavery. He regards the full and absolute power of masters over slaves as something monstrous and shameful in human nature. He says that the law of Moses permitted it because of the hardness of men's hearts and only in moderated and temporary form, and that the Christian law has left slavery only because it could not be suddenly and publicly abolished.[180]

About 1638 the Capuchin friar Yves of Paris still follows this French critical attitude. In a popular work on Christian morality he describes captured prisoners of war as exchanging a natural death for a legal death, deprived of all legal rights, and the children of slave-mothers as endowed with life but

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[178] *Controversiae de Justitia et Jure . . . in II-II D. Thomae.* 1608. I. Q.3, a.1, et *conclusio* IV. Earlier version published 1591-8.

[179] (i) *Matt.* VII 24-26 and *John* I 12. (ii) *Luke* XXII 26-27 and *I Cor.* VII 23. (iii) *I Cor.* VIII 6 and *Ephes.* IV 5-6. (iv) *Gal.* IV 31. (v) *Gen.* VI and *De Civitate Dei* IV, c.4. (vi) *Ecclus.* XV 14, *Gen.* I 28 and *De Civitate Dei* XIX, c.15.

[180] *De la Sagesse.* 1st edn. 1601. L.I, c.44. Critical edn. 1836. L.I, c.50.

subject to legal death. The victor in war triumphs over the right order of nature when he enslaves his prisoner; he commits a sacrilege, upsetting the designs of Providence, when he diverts such an eminent creature as man from using his faculties to contemplate and enjoy the beauty of God's creation and worship its Creator and share in His grace, and constrains him by force to work like a beast of burden. A state of violence is set up between master and slave, like that between animals of different species, and between them there reigns good or bad fortune instead of justice and reason.[181]

(*ix*) (2) *The beginning of the Christian anti-slavery movement outside the Catholic Church: The Religious Society of Friends* (*Quakers*), 1766-1771.

It is impossible to estimate the extent of the influence of Quaker anti-slavery teachings upon the Catholic Church; their influence upon other Christian bodies was considerable.[182] It is only possible here to draw attention to a few of the early Quaker writings on this subject.

In 1676 the Irish Quaker William Edmundson circulated a letter to the Friends of New England in which he recommends them to consider the Negroes' condition of perpetual slavery and make these conditions their own and so fulfil the law of Christ, so that the slaves may feel, see and partake of the Friends' liberty in the gospel of Christ.[183]

Four Dutch Quakers submitted a Protest to the Yearly Meeting at Germantown, Pennsylvania in 1688. They ask whether any Friend would wish to be treated in such manner, to be sold and made a slave

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(181) *Les Morales Chrestiennes*. 4th edn. 1641-5. III, chap. 9, 392-5.
(182) The Quaker origins of the Christian anti-slavery movement in N. America are summarized by Jenkins (W.S.): *Pro-slavery Thought in the Old South*, 1935, 7-22.
(183) Records of New England Yearly Meeting, Vol. 400 (MS).

till the end of his life; and remind the Friends that they should do to all others as they would wish to be treated themselves, making no distinction of family or race or colour.[184]

The Friends of Philadelphia published in 1693 the first printed anti-slavery tract in North America. It appears to have been written by George Keith though he had been disowned by the Friends in 1692 and later joined the Church of England. This six-page tract reminds the Friends of Christ's command: "All things whatsoever ye would that men should do unto you, do ye even so to them" (*Matt.* VII 12). As they and their children would not wish to be kept in perpetual slavery against their will neither should they keep the Negroes in this way. Slavery is such intolerable punishment to body and mind, that none but notorious criminals deserve it. But the Negroes have done the Friends no harm; how inhumane it is, therefore, to oppress them and their children from one generation to another.[185]

The Quaker William Burling wrote an Address to the Friends and Elders of the Church in 1718 concerning the keeping of slaves. It provides an interesting insight into the practice of charismatic gifts at the Friends' meetings for worship.[186] He regards slave-keeping as the greatest of the world's corruptions that ever the devil brought into the Church in America. He says that the Lord by His Spirit manifested this evil to him before he was 12 years of age, and since then from time to time he has been drawn in mind to reprove and testify against it, in spite of being much discouraged by the fact that it is practised by so many Friends and even Elders. He

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[184] Address dated February 18, 1688, Germantown Settlement.
[185] *An Exhortation and Caution to Friends concerning the buying or keeping of Negroes.* August 13, 1693. 3-4.
[186] Quoted by Benjamin Lay: *All Slave-keepers that keep the Innocent in Bondage* . . . 1738, 6-8.

formerly thought it strange that the Church did not exclude it by her discipline, yet now he realizes that this is not easily accomplished as there is such strong opposition that there would be danger of much strife and disorder in the Church. But he appeals for freedom for Friends to testify, under the direction of the Holy Spirit, against the evil of slave-keeping even though this testimony be contrary to the interests or inclinations of the hearers, and even though it implicitly condemns many of the Brethren. If the Lord requires such a testimony from any Friend he is bound either to judge his Brethren or quench the Spirit in its motions in his own heart.

In 1729 at the age of 36, after spending many years in speaking against slavery, the Quaker Ralph Sandiford published a work on the injustice of the Negro slave trade. He calls it an eternal sinking in iniquity without bottom.[187] His book aroused immediate opposition; his anti-slavery work impaired his health and he died four years later.

The Quaker Elihu Coleman published in 1733 a pamphlet against slavery. After providing arguments already given by his brethren, he adds that slavery is a hindrance to the spreading of the Gospel among the Negroes for whom Christ died and to whom, as a nation, Christ commanded his Gospel to be preached. For through slavery they hate the name of Christian, for it is Christians that enslave them, and even nature itself tells them that it is wrong.[188]

Benjamin Lay (1677–1759) had been a sailor and presumably engaged in the slave-trade; but as a Quaker he devoted his life to speaking against slavery at meetings for worship. In his book published in 1738 he calls himself an illiterate man, but he

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[187] *The Mystery of Iniquity*. 1729. 20-1.
[188] *The Testimony against the Anti-Christian Practice of making Slaves of Men*. 1733. 8-16.

gives clear Christian witness against slavery, and like William Burling, provides an insight into the difficulties of using spiritual gifts at meetings for worship.[189] He regards slave-keeping and slave-trading as the corrupt fruit of a corrupt tree which is hell itself (cf. *Matt.* VII 17, 18). He recounts how the Friends used to carry him forcibly out of meetings or keep him out by a constable or by other means; they used to say that he is a very troublesome fellow and has been so for many years, and is too censorious about slave-trading and slave-holding; though he was never disowned or disciplined for any disorder, his brethren continued to cry "Cast him out, cast him out!"

At the yearly meeting in 1754 of the Society of Friends at Philadelphia there was published a joint letter by 12 co-signatories against slavery.[190] It provides an admirable expression of Christian charity. Like William Edmundson they invite the Friends to make the Negroes' case their own. Like the Dutch Quakers they recall the royal law of doing to others as they themselves would be done by. They say that where slave-keeping prevails, pure religion and sobriety decline, as it evidently tends to harden the heart, and render the soul less susceptible of the holy spirit of love, meekness and charity. How can Friends, who have been concerned to publish the Gospel of universal love and peace among mankind, be so inconsistent with themselves as to purchase prisoners of war, and thereby encourage this anti-Christian practice? Do Friends consider that Negroes are called, and do Friends sincerely desire that Negroes may become heirs with them in glory, and rejoice in the liberty of the

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[189] *All Slave-keepers that keep the Innocent in Bondage*. See especially 27, 33, 43, 45, 61-8, 136-7, 140-2.

[190] *Epistle of Caution and Advice concerning the Buying and Keeping of Slaves.*

sons of God, while they are witholding from them the common liberties of mankind? Can the Spirit of God, by which Friends have always professed to be led, be the author of these oppressive and unrighteous measures?

In 1762 the Quaker author John Woolman published the second part of a treatise against slavery.[191] By this date very many Quakers, as well as Methodists and other Christians, had been won over to anti-slavery opinions, and Woolman explicitly addresses his tract to the leaders of other Christian denominations, and provides theological arguments against slavery. He points out the unreasonableness and injustice of the title of birth from a slave-mother:

> To suppose it right that an innocent man shall at this day be excluded from the common rules of justice, be deprived of that liberty which is the natural right of human creatures, and be a slave to others during life, on account of a sin committed by his immediate parents, or a sin committed by Ham, the son of Noah, is a supposition too gross to be admitted into the mind of any person who sincerely desires to be governed by solid principles. . .

The French Quaker Antoine Bénézet wrote several works against slavery and in 1771 edited a work on the Negro slave-trade.[192] He recalls that the Negro plantation-slaves are the brethren and neighbours of the planter, the children of the same Father, and some of those for whom Christ died. And he invites the slave-holder to consider whether there will not always remain to the slave a superior property or right to the fruit of his own labour, and more especially to his own person which was given him by God and which none but the Giver can justly claim.

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(191) *Some Considerations on the Keeping of Negroes. Recommended to the Professors of Christianity of every denomination.* Part II. Philadelphia, 1762.

(192) *Some Historical Account of Guinea* . . . Philadelphia, 1771, chap. 8, 93-5.

Lack of space forbids any consideration here of the growth of the anti-slavery movement among other Christian denominations outside the Catholic Church. Enough to say that it had advanced sufficiently among the Episcopal Methodists in North America by 1780 that their Church condemned slavery as "contrary to the laws of God, man, and nature, and hurtful to society; contrary to the dictates of conscience and pure religion and doing that which we would not others should do to us or ours."[193] In 1785 all slave-holding members of this Church were given 12 months in which to emancipate their slaves or quietly withdraw from the Church. Those who disposed of them in any other way than emancipation were to be expelled from the Episcopal Methodist Church. This rule was reaffirmed in 1801.

(*ix*) (3) *The beginning of the humanist anti-slavery movement, 1748–1835.*

The critical attitude in France towards slavery expressed by Bodin, Charron and Yves of Paris – see (*ix*) (1) above – continued even more strongly in the eighteenth century. Unfortunately, due to the opposition of the Church authorities and the condemnation of theological opinions opposed to the common Catholic teaching on slavery, this critical attitude hardened into a philosophical humanism which tended to be anti-clerical. It was the end of the era when the moralists had paid attention only to the ecclesiastical rights of Catholics and the civil rights of citizens, and it was not yet the beginning of the era when they also examined the natural human rights of all members of the human race. And so a social and political movement, at first only

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[193] See Birney (J.G.): *The American Churches the Bulwarks of American Slavery*. London, 1840, 14.

for the abolition of the slave-trade but later for the general emancipation of all slaves, began to develop in France outside the Catholic Church.

In 1748 the French political philosopher and jurist, the Baron de Montesquieu, published *De l'esprit des Lois*. Within a year and a half it had run into 22 editions and had been translated into many languages. Its influence on jurisprudence and on the development of thought concerning the rights of man was considerable. Montesquieu regards slavery not as something naturally good; it does not benefit the slave because nothing that he does is through virtue; it does not benefit the master because he acquires and learns from his slaves all manner of vices. He regards the titles of slave-ownership in Roman law as irrational: (i) The *jus belli* can only give the victor the right to ensure that his prisoners can no longer do harm; he has no right to kill them since there is no longer any necessity in battle to do so, and consequently he has no right to enslave them instead of killing them, as the *jus gentium* allowed. (ii) A free destitute person has no right to sell himself into slavery since liberty is priceless; and the sale is null and void since both the person sold and the price paid become the property of the master; for the slave can own nothing, not even the price received for the sale of his liberty. (iii) If a person may not sell himself even less may he sell his unborn children into slavery; if a prisoner of war may not be enslaved, even less may his children. In conclusion, he contradicts Aristotle, saying that the law of slavery has never been able to benefit the slave; in every case it is against him, without ever being for him, which is contrary to the fundamental principle of all societies.[194]

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[194] Book XV, chapters 1-2.

However, Montesquieu's book was condemned by the Sorbonne, and for one reason or another, was placed by Rome in 1751 on the Index of Prohibited Books.

In 1762 Rousseau published his book on the social contract. In his chapter on slavery he writes that self-sale into slavery is null because it is a renunciation of the quality of being human, a renunciation of the rights and duties of mankind; it is therefore incompatible with human nature; it takes all liberty from the human person and therefore removes all morality from the slave's activity.[195] A contract which gives the master unlimited authority and demands from the slave unlimited obedience is null because it is not a fair exchange; the master has all the rights, the slave has none. Rousseau repeats the argument of Montesquieu against enslavement of prisoners of war. However, for one reason or another, Rousseau's work was placed on the Index of Prohibited Books in 1766.

The Abbé Raynal edited a six-volume work in 1770 on the activities of Europeans in the East and West Indies. He himself probably did not write the section on slavery.[196] This section attacks the common Catholic teaching concerning *dominium utile* over slaves, see (*viii*) (7) above: a master who disposes of the labour and strength of slaves must also necessarily dispose of their lives which depend on the voluntary use of their faculties. The reasonableness of the legal titles of slave-ownership is denied. And the Aristotelian argument of the natural inferiority of the Negroes is ridiculed:

> The minds of the negroes are narrowed because slavery destroys all resilience of spirit... They are treacherous

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[195] *Du Contrat Social.* L.I, c.IV.
[196] *Histoire Philosophique et Politique des Establissemens et du Commerce des Européens dans les deux Indes.* Amsterdam, 1770. L.XI.

because they are under no obligation to speak the truth to tyrannical masters. They acknowledge the superiority of our intelligence because we have perpetuated their ignorance. They admit the justice of our authority because we have abused their weakness... You have left nothing undone whereby to degrade these unfortunates, and then you reproach them for their vileness.

However, for one reason or another, this work was placed on the Index of Prohibited Books in 1774 and again in 1784. However, by 1777 it had already run into three English editions.

In Italy the jurist Filangieri had considerable influence in publicizing the views of Montesquieu on slavery. In a major work published in 1782 he denounces the inhumanity of the Roman legal titles of slave-ownership, and his book was soon translated into French, German, Spanish and English.[197] However it was, for one reason or another, placed on the Index of Prohibited Books in 1784 and again in 1826.

Before the French Revolution in 1789 a number of pamphlets were published by French authors on the rights of man. The Count Abbé Siéyès published one of these and one of his 42 articles states that each man is the sole proprietor of his person; he may enter into an engagement to employ his services or his time, but he may not sell himself. This first form of property is inalienable.[198] However, there was no explicit mention of this theme in any of the 17 articles of the Declaration of the Rights of Man in the French Constituent Assembly in 1789. Article I of this Declaration merely states that people are born and remain free, and equal as regards their rights.[199]

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(197) *La Scienza della Legislazione*. 1782. L.I, c.IV.
(198) *Declaration des Droits de l'homme en Société*. 3rd edn. 1789. Art.V.
(199) Asbeck (F.M. van): *The Universal Declaration of Human Rights and its Predecessors*, 1679-1948. Leiden, 1949, 48.

Another of the French "revolutionary" clergy who wrote on the subject of slavery was the Abbé Grégoire, of Jansenist persuasion, who later became constitutional Bishop of Blois. In 1815 he referred in a pamphlet to the Scriptural foundations for the duty of everyone not to do to others what he would not wish to have done to himself (*Tob.* IV 16; *Matt.* VII 12; *Mark.* XII 31), and not to kidnap and sell his neighbours into slavery (*Ex.* XXI 16; *Deut.* XXIV 7; *I Tim.* I 10).[200]

About 1835 a Protestant American humanist, William Channing, uses the inductive method in his influential book to prove the moral evil of the institution of slavery. He devotes some 50 pages to a description of the harmful psychological, social and political effects of chattel-slavery as it existed under law in the Southern States.[201] Slavery crushes the human spirit of a person and degrades him into a brute; it destroys his sense of responsibility, denies his human rights concerning work and ownership, and undermines his sense of justice and morality. The slave-laws prohibit all instruction and education of slaves, they violate every natural family and parental right and duty, they permit the breeding of slaves for profit like cattle. Channing describes the effects on the slaves of licensed cruelty under the absolute power of their masters and overseers, and the corrupting influence of slavery upon the sexual morality of the masters; he describes the political influence of slavery not only in creating a caste of despots but also in destroying freedom of speech, since the publication in the slave-holding States of a word against the institution of slavery could endanger the author's life. In conclusion, only a corrupt tree could bring forth such evil fruit.

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[200] *De la Traite et de l'esclavage des Noirs et des Blancs.* 21-22.
[201] *Slavery.* 4th edn. Boston. 1836. Chap. IV.: The evils of slavery, 67-117.

(*ix*) (4) *The growth amongst Catholics of anti-slavery opinions which are inspired either by the New Testament or by humanism, 1790–1873.*

Beginning with St. Alphonsus Liguori (d. 1787) and continuing to the twentieth century, there have been a number of moralists who – from the subject matter which they cover and the detail in which they discuss it – appear deliberately to have omitted any treatment of slavery and slave-trading. It is not possible to be certain of the reason for their silence, but one explanation may be that they disagreed with the common Catholic teaching on slavery but were prevented by theological censorship from writing against it.

In France criticism of the common Catholic teaching on slavery was widespread at the end of the eighteenth century; and the honour of being the first "approved author" who wrote a theological work with ecclesiastical *imprimatur* against this teaching, must apparently go to Nicholas Bergier who in 1790 wrote an eight-volume dictionary of theology in French. He chooses to attack a dissertation dated 1764 by an unnamed author in order to emphazise with irony the distributive injustice involved in the interpretation of the patristic view, (iv) (3) above, that slavery is a consequence of original sin.[202] He suggests that before the Europeans enslave the Negroes they should begin by proving that God has given them the honourable commission of making the inhabitants of the "Guinea Coast" expiate the taint of original sin, and that they themselves are in this respect the administrators of divine justice. He uses more irony to attack the explanation that the Negro slaves would have been worse maltreated in their own country than in the French (West Indian) colonies: is it right

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(202) *Dictionnaire de Théologie*. Liège. Tom V, 1790, 583-4, "Nègres".

for Frenchmen to do them harm for fear that their own countrymen may do them yet more harm? Is it from motives of compassion and humanity that European business men carry on the slave-trade?

In 1822 there was edited anonymously in Madrid a new edition of a frequently re-edited Spanish handbook for confessors. The editors are influenced by French humanism and Spanish political liberalism, and provide an imaginative historical account of the evils of enslavement.[203] They define servility as the vice by which human beings allow themselves to be changed from rational beings into brutes without trying to uphold and defend their own and their neighbours' rights against those who usurp them. They define liberalism as the virtue by which people remain in the rational state with which they have been endowed by nature and resist passing into the brute condition, by upholding and defending their own and their neighbours' liberty and rights against those who wish to usurp them.

For one reason or another, this edition of the handbook was placed in 1823 on the Index of Prohibited Books.

At the time of the Catholic renaissance in a few dioceses of Switzerland and Germany in the early nineteenth century, at least one "approved author", because he was a Bishop and so not subject to the ordinary rules for censorship of books, was able to write in German against the common Catholic teaching on slavery. He was Johann Sailer, Bishop of Ratisbon, a pioneer in the renewal of moral theology, who wrote as follows:

> The state of slavery, and any treatment of human beings as slaves, turns people who are persons into mere things, turns people who are ends in themselves into mere means,

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[203] Lárraga (Francisco): *Prontuario de la Theologia Moral.* 1822. I. Tratado VIII, cap. IX: "Del servilismo y liberalismo", 310-1.

and does not allow the responsibility of people for what they do, or do not do, to develop properly, and in this way cripples them in their very humanity; hence it is contrary to the basic principle of all morality. And although the natural freedom of every citizen needs to be limited for the sake of social harmony, so as to give rise to a legal, civic, equitable liberty, nevertheless every limitation must itself be lawful, that is to say, not contrary to the very basic principle of morality.

The divinely given teaching of Christianity demands that the essential character of slavery be done away with (without any revolution), and, at the most, that it be left existing only in name; for St. Paul teaches explicitly: (*a*) that a slave in God's eyes is no different from a free man, that God is no respecter of persons, and that both free men and slaves will be rewarded or punished according to the good or evil that they have done (*Ephes.* VI, 8, 9); (*b*) that Christians should treat slaves as brothers, consequently as free men (*Philem.* 16); and that as in Christ there is neither Jew nor Greek, so also there should be neither slave nor free man, since love regards all people as members of one body (*Gal.* III, 28); (*c*) that when slaves can become free they should prefer freedom, but that when they cannot they should consider themselves as free men through Christ, as dearly bought; that they should obey Christ in other men, and should consider themselves as voluntary slaves of Christ just as free men do, and gladly fulfil His commands (*I Cor.* VII, 20, 24); (*d*) that instead of causing ruin in the world through a tremendous uprising of their class, slaves should rather persevere in their condition (*Col.* III, 22-25; *I Tim.* VI, 2; *Tit.* II, 9, 10; *I Cor.* VII, 20-21) . . .

All the objections which are brought up to justify slavery are due to defects of reasoning which, in the service of self-will, is perverted in order to justify what is evil:

Objection (*i*) "There are inferior races of mankind whom nature has destined for slavery." Reply: "Treat them rather as human beings, then you will be able to see clearly what nature has intended in their regard; if you treat them as animals you will never be able to perceive what nature intends for them, for you yourself will be providing for them the greatest obstacle to any natural development."

Objection (*ii*) "There will be many who are born as slaves; I am here entitled to the natural capital-growth of slaves." Reply: "No one is born as a slave, but every one is born as a human being. And furthermore, I have to make restitution of stolen property which I have accepted even after having purchased it; how much more then must I leave a man free since I may never accept him even after having purchased him, because he is not a fit subject for purchase? And if the father may not be made into a slave,

either by means of purchase or in any other way, so likewise the son of the father may not become a slave due to his birth. And if he is not the slave of his own father, how can he be your slave?"[204]

However the Catholic renaissance in Switzerland and Germany was largely suppressed, and the renewal of moral theology, canon law, Scripture studies and Church history was considerably held up.[204a] For the next half century it is not possible to find a single competent and well-known Catholic moralist who writes against the common Catholic teaching on slavery; and during this period some of the "approved" Catholic historians find it difficult to be impartially critical in their descriptions of the past effects of this teaching, and in their books the scientific putting forward of evidence concerning slavery tends to become the art of one-sided presentation and whitewashing. So for the next half century it was left almost entirely to the Catholic laity, inspired either by the New Testament or by humanism, to put forward arguments against the moral legitimacy of the institution of slavery. There was one notable exception, a French missionary priest.

Monsieur l'Abbé Dugoujon, a missionary for a while in Guadeloupe, published a series of letters on slavery. Writing in 1840 he suggests that the criteria for judging the moral quality of slavery are to be found in (i) its legal principle, (ii) its subjects, (iii) its purposes, and (iv) its effects. The legal principle of slavery is that the master has full ownership over the slave and all he produces, while the slave is legally incapable of owning anything at all. The subject of slavery, the Negro, has no fruition of his own time, of his power of locomotion, has no

[204] Sailer (J.M.) (1751-1832): *Handbuch der Christlichen Moral, II.* Sämmtliche Werke, Sulzbach, (1830-1841), XIV, 196-198.
[204a] Swidler (L.), "Liberal Catholicism: a lesson from the past", *Cross Currents*, West Nyack, N.Y., 21 (1971) 1, 25-37.

authority over his own children who belong to his master, has no rights in relation to his spouse who may be separated from him and sold elsewhere, and has no rights in relation to his master who may judge and punish him almost as he pleases. The purpose of slavery is to make the slave tractable by intimidation and by depriving him of education and religion. The effect of slavery – "by its fruits the tree is known" – is to make the slave a passive instrument, vegetating stupidly in concubinage, promiscuity and vice.[205]

In another letter written in 1843, the Abbé Dugoujon provides a lengthy but admirable explanation of his anti-slavery opinions from which the following is an extract:

> . . . I shall maintain, even against theological scholars, that slavery is morally unlawful, against nature, and condemned at least implicitly by the word of the Gospel. . .
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> [*Footnote*. . . for a state of things to be upheld and defended as such, is it not necessary that the sum of good which it produces should surpass the total of evil which it causes, whether directly or indirectly? Now, where is the good which slavery does to the Negroes? On the other hand I can assert that the disorders of slavery are so constant, so universal, so inevitable, that they are equivalent to necessary effects. . .]
>
> The Apostle St. Paul recommended slaves to be submissive and respectful, but he gave no formal authorization of slavery; he only made use of such prudence as was imposed on him by the circumstances in which he was preaching; he tolerated an evil which was for the time being incurable and which he could not affect directly without making it worse. The Christians were very small in number, few of the masters had embraced Christianity, and most of the slaves knew nothing of the new religion which had come into the world. And so, how inopportune it would have been to speak openly against slavery, to make a frontal attack upon it, in a society where three-quarters of the human race were slaves! . . . No, the advice of the Apostle to the slaves cannot be regarded as an approval of slavery; if it is in order to speak personally, I can say that during the time that I spent in the colonies,

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(205) *Lettres sur l'esclavage dans les colonies françaises.* Paris, 1845. 10th Letter, September 18, 1840, 52-4.

while I reminded the slaves about our common descent, human brotherhood, and the great precept of love, I never stopped exhorting them to fidelity and obedience; in such fashion that anyone who heard me could have taken me – arguing from my words in the same way that people have argued from the advice of St. Paul – as a most devoted friend of the colonial system. But God knows . . . how far they would have been mistaken. I acted in this way for the sole reason that, to act otherwise would have been to rouse the masters against the slaves and bring down on the latter excessive harshness and punishments without achieving any good at all . . .

. . . the Apostle . . . did not leave off attacking forcibly, though in an indirect manner, the slavery and the anomalies with which paganism abounded; and sometimes he even attacked them sufficiently openly so that all men of good will might understand what were the true tendencies of the new faith. Who does not recognise these words: "After baptism, there is neither Jew nor Greek, neither freeman nor slave, neither man nor woman, you are all one in Jesus Christ" [*Gal.* III 27-28]. These are words of immensely wide application by which the Apostle of the Gentiles undermined the basis of the hideous edifice of pagan customs and usages,. . . the atrocious *jus gentium*, . . . and above all, the laws which existed everywhere, which put . . . the husband against his wife, the master against his slave, and in general, the strong against the weak.[206]

In 1842 Jaime Balmes provided a summary "history" of Catholic teaching on slavery.[207] It was a crucial time in the growing realization among Catholics of what slavery is, not in abstract theory but in actual practice. He chooses what no doubt appears to him as a priest as a practical method of correcting the common Catholic teaching on slavery. Like some of the moralists, he simply omits all reference to it. He omits all reference to the titles of slave-ownership in Roman civil law on which the common teaching is based. He omits the unanimous teaching of moralists from St. Antoninus of Florence until the French Revolution. He is therefore left with texts of Holy Scripture, canons of early Church

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[206] *Op. cit.* 21st Letter, May 5, 1843. 103-8.

[207] *El Protestantismo comparado con el Catolicismo*. 1842. caps. 15-19. Edic. crit.: Biblioteca de Autores Cristianos, Madrid, 1948-50, IV, 140-202.

councils, and texts from the Fathers of the Church. By correctly interpreting texts of Holy Scripture, and by selective use of canons of Church councils and selective use of texts from the Fathers, he is able to deduce what is the true teaching of the Catholic Church, and he proves that it was Catholicism which effectively attacked and largely put an end to slavery in Europe by the twelfth century. What he writes is true – but it is not the whole truth. In particular, he omits to show how the texts of Holy Scripture were often *not* interpreted in a nineteenth century anti-slavery sense. But this method of rewriting the history of slavery, "from the Catholic angle", was followed by other nineteenth century Catholic historians. Needless to say, other authors who did not have a bias towards Catholicism, were able to show up the one-sidedness of such a presentation.[208]

In 1843 Daniel O'Connell wrote an Address from Ireland to the Cincinnati Irish Repeal Association. He verbally flays the American Catholics for advocating slavery and for taking for granted that a human being can be the property of another human being. He denounces them for asserting that the Negroes are naturally an inferior race. He insists that slavery is repugnant to the first principles of society and repugnant to the American Declaration of the equality of all men, and the inalienable right of all men to life and liberty.[209]

At the time when the American Civil War was beginning, in 1861, Augustin Cochin, a former Mayor of Paris, published a book on the abolition

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[208] See for example: Schoelcher (V.): *Histoire de l'esclavage pendant les dernières années*. Paris, 1847, especially Tom I, 204-221. Also: Larroque (Patrice): *De l'Esclavage chez les Nations Chrétiennes*. Paris, 1856. The latter was placed on the Index of Prohibited Books in 1860.

[209] Quoted by Chase (S.P.): *Liberty or Slavery? Daniel O'Connell on American Slavery*. 1864. 2-6.

of slavery for which he was knighted by Pope Pius IX. At this time, and until 1866, – see the Instruction of the Holy Office, (vii) (4) above – the fallible ordinary magisterium of the Church was still teaching what had been (since about the thirteenth century) the common Catholic teaching on slavery; but this teaching was no longer commonly accepted by all well-informed clergy and laity.

Both a Bishop and a priest have been quoted in this section, so it is fitting to include a quotation from a layman, Monsieur Cochin, since it is he who draws attention to the principle of continuity of doctrine upon which the Holy Office and the majority of moral theologians were relying:

> . . . Predisposed to show respect for tradition, theologians are especially anxious to attach themselves to the chain of the past, and to rest their doctrines on those which were professed before them; a valuable, or rather indispensable, tendency when points of faith are in question, – a dangerous tendency when it regards open questions, the solution of which changes and is susceptible of progress. They teach concerning slavery what was taught yesterday and the day before, but what no priest or layman believes any longer today. They teach that slavery is not unlawful, firstly, when it proceeds from a legitimate war or voluntary sale; secondly, provided it respects the soul, body, family, and instruction of the slave. But I challenge anyone to show me today, throughout all Christianity, a single slave who has become such as a prisoner of war or through voluntary sale, to say nothing of the manner in which he is treated.(210)

Cochin also repeats the arguments, commonly used in France since the time of Montesquieu, showing the unreasonableness and injustice of the titles of slave-ownership in Roman law.(211)

After reading Cochin's book, Orestes Brownson, writing in 1861 as a lay Catholic journalist, insisted that by slavery a human being is wronged, outraged and debased.(212) In order to keep their slaves in

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(210) *L'Abolition de l'Esclavage*. Paris, 1861, Tom II, 442-3, footnote.
(211) *Op. cit.* 450-1.
(212) "Slavery and the War". *Brownson's Quarterly Review*. October 1861.

subjection, slave-holders must close to them, as far as possible, all avenues to learning and intellectual and moral culture; they must keep them as near the level of animals as they are able; they must stifle what is human in them, and prevent the development in them of that "image and likeness" of God in which they were created. Previous to the Civil War, Brownson had always held that, though the institution of slavery was wrong in principle, individual slave-holders were not necessarily sinners, since slavery was part of the social and economic system; and although in principle the slave-holder had a duty to emancipate his slaves, in practice he could not do so; it was the duty of the community in the slave-holding Southern States to work towards legal abolitionism. The fault lay in the legal institution, not in the individual conscience. But somewhat illogically, like very many other Christians before the Civil War, Brownson was strongly opposed to slavery-abolitionism, the political movement in the Northern States to abrogate the slavery laws in the Southern States; he considered it to be an immoral and unconstitutional attempt to interfere in the internal affairs of other Sovereign States; he held that it would not benefit the slaves and was an attack on the legal property-rights of the Southern slave-holders.[213] However, after the Civil War had begun, Brownson changed his attitude towards abolitionism; he held that it had become a military necessity, no longer unconstitutional or illegal, and that the slavery-abolitionists were not fanatics but virtuous. He even attacked Catholic prelates and laity for being slothful in tolerating slavery instead of opposing it.[214]

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(213) "Slavery-Abolitionism". *Boston Quarterly Review*, April 1838. (Brownson was converted from Unitarianism to the Catholic Church in 1844). "Slavery and the Mexican War". *Brownson's Quarterly Review*, July 1847. "The Slavery Question Once More". *Op. cit.* April 1857.

(214) "Archbishop Hughes on Slavery". *Brownson's Quarterly Review*, January 1862. "Slavery and the Church". *Op. cit.* October 1862.

In 1866 there was published in Madrid a book on slavery in Cuba by a layman resident in Havana.[215] He provides a brief interpretation of texts of Holy Scripture in an anti-slavery sense, especially "Love your neighbour as yourself" and "Do to others as you would that they should do to you". He also shows that St. Paul's moral directives for slaves and masters may not be interpreted as a divine authorization of the institution of slavery.

Between 1865 when the Spanish Abolitionist Society was founded and the year 1873, a large number of pamphlets were published in Spain, as well as 34 issues of a journal *El Abolicionista Español*, with the object of promoting the abolition of slavery in the Spanish West Indian colonies.[216] The inspiration of all this propaganda, with the exception of a single speech concerning Catholicism, is humanist, political and economic. The Christian motivation for slavery-abolitionism is noticeably absent.

(*ix*) (5) *Catholic resistance to anti-slavery opinions and abolitionism, and the reiteration in North America of the common Catholic teaching, 1836–1864.*

Already in 1836 the propaganda of Christian anti-slavery movements had achieved considerable force in North America and Europe, and at this date the lay editor of a Catholic journal considers that the Christian abolitionists should be regarded as a sect since they differ from all other Christians in believing that slave-holding is a sin against God.[217]

The publication in 1840 of the first volume of a work on moral theology by Bishop Kenrick of Philadelphia provided guidance for the Catholic

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[215] Armas y Céspedes (F. de): *De la esclavitud en Cuba*. 1866. 331-7.
[216] See frontispiece to pamphlets published by Sociedad Abolicionista Española, 1873.
[217] Webb (B.J.), editor: *Catholic Advocate*, April 2, 1836.

clergy concerning domestic slavery in the Southern slave-holding States. The author regrets the legislation which prohibits the freedom of movement and the education of the Negro slaves, and in some places restricts their exercise of religion. But he judges that since such is the state of things, nothing should be attempted against the laws, nor anything be done or said that would make the slaves bear their yoke unwillingly.[218] And beginning in the same year 1840 Bishop John England of Charleston, South Carolina, wrote a series of long letters on slavery (which were subsequently published) in which he reiterates the common Catholic teaching. He proves that the recent encyclical of Pope Gregory XVI in 1839, see (vii) (1) above, condemned merely the Negro slave trade and not the institution of domestic slavery as practised in the Southern States. He describes how at the subsequent Fourth Provincial Council of Baltimore, at which a majority of the Bishops were from the slave-holding States, this encyclical was unanimously accepted without any Bishop thinking that it demanded any change in the existing practice concerning domestic slavery.[219] In 1841 he publicly wrote that he was not friendly to the existence or continuation of slavery but that he saw the impossibility of abolishing it at that time in South Carolina.[220]

In France the growing anti-slavery opinions were in sharp conflict with the common Catholic teaching. In 1846 the Superior of the Seminary of the Holy Spirit in Paris, which trained missionary priests for work in French colonies, felt constrained to write a reply to the Catholic press on the burning question of the doctrine on slavery taught at the Seminary;

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(218) Kenrick (F.P.): *Theologia Moralis*. I. Tr.V, c.VI, n.38 and Tr.VIII, c.IV, n.2.

(219) 1st and 2nd Letters to the Hon. John Forsyth, Secretary of State, United States. September 29, and October 7, 1840. *Works*, 1849, III 115-9.

(220) *U. S. Catholic Miscellany*, February 17, 1841.

he insisted that the teaching of the professors was that of the generality of theologians and of the Catholic Church, and that it would be impossible for them to accept any other teaching without betraying their trust.[221]

The priest-editor of the journal which published Bishop John England's letters on slavery expressed admirably the contemporary opinion that the common Catholic teaching on slavery was unchangeable; here are his words:

> There is no danger – no possibility, on our principles – that Catholic theology should ever be tinctured with the fanaticism of abolition. Catholics may and do differ, in regard to slavery, and other points of human policy, when considered as ethical or political questions. But our theology is fixed, and is, and must be the same now as it was for the first eight or nine centuries of Christianity. . . In Catholic theology the question is a settled one.[222]

However, there was an element of unreality in any claim of North American Catholics to be loyal followers of the common Catholic teaching. For they must have been well aware that the form of slavery which existed under the inhuman slavery legislation in the slave-holding States was an extreme form of chattel-slavery.[223] And it was precisely this form of slavery which moralists for over 200 years had commonly regarded as unjust. In 1850 there was no public Catholic movement in the Southern States for the amelioration of the slavery legislation, although at that date, according to the returns of the seventh census of the United States, there were 167,822 Roman Catholics in the 16 slave-holding States. On the contrary, it was a Catholic, Chief Justice Roger Taney, who was one of the Judges

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[221] *L'Univers Religieux*, November 4, 1846.
[222] Reynolds (I.A.) in Bishop John England's *Works*, 1849, III, 107-8.
[223] See Goodell (W.): *The American Slave Code in Theory and Practice – its Distinctive Features shown by its Statutes, Judicial Decisions and Illustrative Facts*. London, 1853.

of the Supreme Court which was responsible for the judicial decision that Negro slaves were not intended by the Declaration of Independence to be included as a part of the people, and had been regarded as beings of an inferior order and altogether unfit to associate with the white race in social or political relations, and as so far inferior that they had no rights which the white man was bound to respect, and that Negroes might justly and lawfully be reduced to slavery for their own benefit.[224] This famous Dred Scott decision was another expression of the Aristotelian theory of natural slavery, see (v) (1) above.

By 1860 it would appear that the common Catholic teaching concerning slavery, which was supported by the majority of Catholic clergy and laity in North America, was being expressed in the formula that "slavery is not intrinsically wrong".[225] In other words, if it were "intrinsically evil", like idolatry or blasphemy, God could never have permitted it for destitute Israelites, Church Councils could never have imposed it as a penalty, and Christian Princes could never have imposed it upon non-Christians captured in just warfare. However this specious argument is merely stating that slavery is a physical evil, less evil than involuntary death either in battle or by starvation, but more evil than involuntary torture, flogging or imprisonment; it is merely re-stating the patristic insight that slavery, to be just, may be imposed only as a consequence of moral evil or sin, (iv) (3) above. This formula "slavery is not intrinsically wrong" does not apply to the case of the child of the slave-mother – and the vast

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[224] 19 Howard 393. *Dred Scott* v. *John F. A. Sandford.* March 6, 1857. Compare the pagan Roman law: *Servile caput nullum jus habet.* D.IV. 5, 3, 1.

[225] Rice (M.H.): *American Catholic Opinion in the Slavery Controversy.* 1944, Chap. VIII, 152-7.

majority of American Negro slaves in 1860 were held by this title of birth. For the child of the slave-mother is innocent of all personal sin and is unjustly penalized by suffering all the pain and sorrow and deprivation of human rights that the condition of slavery necessarily entails.

Writing an unsigned article in his diocesan journal in 1862, Archbishop John Hughes of New York is forced equivalently to the admission that he knows of no moral justification of the slave-owner's title to the Negro slaves born from slave-parents in America:

> The terrific part of the question is, that not only the individuals brought to the American continent or islands are themselves to be slaves, but their posterity, in like manner, for all time to come. This is the only terrific feature about American slavery. And yet it is not alien from the condition of mankind in general. Original sin has entailed upon the human race its consequences for time and eternity. And yet the men who are living now had no part in the commission of original sin.[226]

There seems to be little appreciation here of the distributive injustice involved in this description of Negro slavery. Emancipation was held to be desirable because of the existence of recognized abuses in the slave-system, particularly concerning the marriages of slaves, not because of any intrinsic injustice in the system itself; but such emancipation should be gradual. Abolitionism without compensation of the slave-masters was condemned as an unjust denial of property-rights.

It was not until 1864, during the Civil War, that the Catholic Bishop of Florida issued an appeal to the Catholics of the Southern Confederate States to ameliorate the existing legal system of chattel-slavery and divest it of the features which would

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[226] Quoted by Hassard (J.R.G.): *Life of John Hughes, first Archbishop of New York*. 1866. 436.

make it odious to God and man. But he states that the law of God does not reprove slavery. He proposes that as a means of setting the Confederacy upon a solid basis, a servile code should be drawn up and adopted, defining clearly the rights and duties of slaves.[227]

(*ix*) (6) *The correction of the common Catholic teaching concerning slavery*, 1888 *to the present day.*

The preparations for the first Vatican Council (1869–70) and the revival of the study of scholastic philosophy had led to a critical re-appraisal of mediaeval notions concerning human society and human relationships. Some moralists were more ready than hitherto to jettison ancient principles of Roman civil law which did not measure up to nineteenth century developments in secular jurisprudence. By 1888 the transatlantic Negro slave-trade had long since been suppressed by the navies of the maritime powers. Motivated both by "liberal" revolutionary humanism as well as by Christianity, the governments of most of the European and American nations had passed municipal and international legal prohibitions directed against all slavery and slave-trading, including the enslavement of prisoners of war and convicted criminals. Slavery had been abolished by law in Chile in 1823, in Spain in 1837, in the Dominican Republic in 1844, in Ecuador in 1851, in Argentina in 1853, in Venezuela in 1854, in the United States of America in 1865, in Brazil in 1888.

Two letters of Pope Leo XIII on slavery, one in 1888 addressed to the Bishops of Brazil, another in 1890 addressed to the Bishops of the whole world, indicate that the Pope was concerned to provide doctrinal and pastoral guidance even though slavery

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(227) Bishop Augustine Verot: *Freeman's Journal*, New York, July 9, 1864.

had ceased to be a serious political issue for most of the governments of Christian States. There was the question whether the common Catholic teaching, rooted mainly in principles of Roman civil law, could now be modified or altered.

The answer of Pope Leo XIII, or his advisers and "ghost-writers", was to try and interpret some of the ecclesiastical documents of the ordinary *magisterium* from the past in an "anti-slavery" sense. As mentioned above, (ix) (4), a few Catholic historians had been re-writing the history of slavery "from the Catholic angle", (omitting references to the common Catholic teaching), from which it might be inferred that the Catholic Church had always and constantly been abolitionist. It would appear that the Catholic historians who helped to write these two letters for Pope Leo XIII had come to believe that this was the truth. As a consequence, both these two letters lack historical accuracy.

In his earlier letter of 1888 the Pope refers to the patristic view that the state of slavery arose as a penalty for sin, both original and personal, (iv) (3) above; he refers to the Thomistic teaching that the system of slavery is wholly opposed to that which was originally ordained by God, that is to say, to the "first intention" of nature, (v) (1) above; he refers to the "dogmatic theology" of St. Paul concerning the fraternal unity in Christ of the members of the Church, as adopted sons of God the Father, which prevails over the distinction between slave and freeman; he refers to the Apostolic "moral theology" concerning the mutual duties and rights of masters and slaves, (iii) above; he refers to the patristic teaching concerning duties of charity and piety, including the masters' obligation of emancipating slaves, (iv) (7) above.[228]

[228] Letter *In Plurimis* to the Bishops of Brazil, May 5, 1888. Collectanea S. C. de Prop. Fide, (1907), II, n.1688. Paragraphs 7-15.

However in both these two letters Pope Leo XIII singled out for special praise twelve Popes who, he wrote, had made every effort to abolish slavery and prevent its recurrence. His later letter of 1890 addressed to the Bishops of the whole world begins as follows:

> From the beginning, almost nothing was more venerated in the Catholic Church which embraces all men with motherly love, than the fact that she looked to see a slavery eased and abolished which was oppressing so many people. . . ; she undertook the neglected cause of the slaves and stood forth as a strenuous defender of liberty, although she conducted her campaign gradually and prudently so far as times and circumstances permitted. . . ; nor did this effort of the Church to liberate slaves weaken in the course of time; indeed the more slavery flourished from time to time, the more zealously she strove. The clearest historical documents are evidence for this. . . and many of our predecessors including St. Gregory the Great, Hadrian I, Alexander III, Innocent III, Gregory IX, Pius II, Leo X, Paul III, Urban VIII, Benedict XIV, Pius VII and Gregory XVI, *made every effort to ensure that the institution of slavery should be abolished where it existed and that its roots should not revive where it had been destroyed.*(229) [Emphasis added].

With the greatest respect to Pope Leo XIII this is historically inaccurate. In his earlier letter of 1888 he had made selective use of a number of documents written by these same 12 Popes to suggest that there had been a constant "anti-slavery" tradition in the Catholic Church.(230) But a number of other conciliar and Papal documents, as well as canons of general Church Law, are simply ignored; all these 12 Popes who are given especial commendation had only condemned what they and contemporary moral theology held to be *unjust* methods of enslavement or *unjust* titles of slave ownership. Five of the Popes mentioned were the authors of other

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(229) Letter *Catholicae Ecclesiae*, November 20, 1890. *Leonis Papae Allocutiones*, 1898, IV, 112.

(230) *In Plurimis.* Paragraphs 15-18. The historical statements referring to Pope Pius II appear particularly inaccurate, see (vi) (1) above.

public documents which actually authorized enslavement either as an institution or as a penalty for ecclesiastical crimes or as a consequence of war. The historical inaccuracy of writing that these five Popes "made every effort to ensure that the institution of slavery should be abolished where it existed and that its roots should not revive where it had been destroyed" is proved as follows:

Pope Alexander III with the Fathers of the Third General Council of the Lateran in 1179 authorized the penalty of enslavement for captured Christians who had assisted the Saracens, and *Pope Innocent III* did the same with the Fathers of the Fourth General Council of the Lateran in 1215, (v) (2) above; and *Pope Gregory IX* repeated this enactment in a letter to the English in 1235. *Pope Leo X* in 1514 followed the example of three of his predecessors in authorizing the Kings of Portugal to invade and conquer the newly discovered territories of the New World, to reduce the non-Christian inhabitants who lived there to perpetual slavery and to expropriate their possessions, (vi) (2) above. Finally *Pope Paul III* in 1535 sentenced King Henry VIII of England to the penalty of being exposed for capture and enslavement by the Catholic Princes of Europe, (v) (2) above, and in 1548 gave full permission for all persons, clerical and lay, to own, buy and sell slaves in the City of Rome, and abrogated the privilege of the *conservatori* of Rome to emancipate Christian slaves, (vii) (2) above.

Finally there was no condemnation by any of the Popes mentioned of the capture and enslavement of Moslem prisoners of war by the galleys of the Pontifical squadron in the innumerable naval actions which are well documented from about 1500 to about 1800, (vii) (3) above.

The significance of these two letters of Pope Leo XIII is that it was no longer individual Catholics,

whether lay or clerical who were expressing "anti-slavery" sentiments, it was the Pope himself. For the Popes who were held up for especial praise were those who (whether historically accurately or not is here irrelevant) had "made every effort to ensure that the *institution* of slavery should be abolished where it existed and that its roots should not revive where it had been destroyed." No distinction was made between just and unjust enslavement; it was the institution as such which was equivalently condemned.

Pope Leo XIII offered no explanation for this change of theological attitude. He did not indicate in these two letters whether it was a correction of Scriptural exegesis, or the beginnings of the movement for revision of the canon law of the Church, or a correction of the philosophical analysis of the very nature of slavery, or a growing awareness that economic and social circumstances and conditions in many countries had completely changed, or a realization that rationalist humanists and Protestant Christians could have been assisted by the Holy Spirit. Clearly, this was already about 100 years too late to be of any effective value in the anti-slavery campaigns and civil wars and revolutions of the nineteenth century; the lay reformers and abolitionists had won their campaigns without much effective help or moral leadership from the teaching authority of the Catholic Church which had hitherto consistently refused to condemn the institution of slavery or the practice of slave-trading as such.

In 1888 Pope Leo XIII encouraged the members of the Society of African Missions (White Fathers) to form a Catholic anti-slavery movement, and Cardinal Lavigerie made lecture tours, speaking on the evils of slavery, and collecting funds for anti-slavery work.

Finally on May 15, 1891, Pope Leo XIII issued

the well-known Encyclical Letter *Rerum Novarum*. In his Encyclical the Pope referred, amongst other matters, to the labour and wages of employees in an employment-contract, which he declared was "of great importance and in regard to which, if extremes are to be avoided, right notions are absolutely necessary." He stated that human labour is:

> . . . personal since the active force inherent in the person cannot be the property of anyone other than the person who exerts it, and it was given to him in the first place by nature for his own benefit.[231]

This was a Papal refutation of the theory, held by many moral theologians ever since the seventeenth century, see (viii) (7) above, that a human being can be alienated from his acts and work so that another human being can be in full possession of them, can use them, be the "usufructuary" of them. This false theory had been applied not only to slavery, but also to the contract of master and servant. In other words, all through the time of the industrial revolution in Europe and the United States, it had been an acceptable philosophical notion amongst Catholic moralists that an employer who hired workers could "use" the acts of his employee for his own exclusive benefit in the same way that he could use a hired animal or hired machine, provided that he paid his employee a just hire for the "use", and "provided that he did not infringe his employee's human rights".[232] In the growing national economies of countries which were undergoing the industrial revolution, this false

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[231] Paragraph 34. The original Latin text reads: *Quia vis agens adhaeret personae, atque eius omnino est propria, a quo exercetur, et cuius est utilitati nata.*

[232] See for example Bonacina (M.): *Summa Moralis Theologiae*, Antwerp, 1635, II, De Contractibus, Q. VII, Punct. I; Catalanus (P.) S. J.: *Theologia Moralis*, Venice, 1728, I, De Contractibus, Q. XXI, Cap. XI, 1; Ballerini (A.) – Palmieri (D.): *Opus Theologicum Morale*, Prato, 1889-1894, III, De Contractibus, nn.505, 507.

theory contributed to the many injustices suffered by employees, for it was used to justify the exclusion of employed personnel from any equitable right whatever to any share in the benefits of industrial and agricultural growth and development.[233]

In 1956 the Catholic Bishops of Colombia provided some comments upon the above words of Pope Leo XIII:

> . . . Because the character of labour as a personal and human activity can never be ignored in order to degrade it to the level of a simple material thing, the wage-contract is not a contract of sale, nor are the relations between workers and employers simple commercial relationships, unless, in contravention of natural justice, an attempt is made to separate the work from the person, the living, intelligent and free being who produces the work; because, as Leo XIII warns, "the primary characteristic of all human labour is that it is that of a personal being, since the active force inherent in the person cannot be the property of anyone other than the person who exerts it, and it was given to him in the first place by nature for his own benefit". The human person can have superiors who govern him, but not masters who possess him, because he is inalienable; and that which is inalienable is not for sale. Therefore the wages-contract cannot, for this reason, be either morally or legally a contract of sale.
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> It has been called a contract of hire, and that is what St. Thomas termed it: "Workmen hire out their labour".[234] This name can be given inasmuch as the employer takes the worker's labour as a service to himself, though without acquiring it as a property; but it is clear that the hiring of personal activities cannot be entirely equated to the hiring of any completely material and impersonal thing. It will always be a contract *sui generis*, of very special nature and with very special conditions, which can only by analogy be termed a hiring. Roman law made the slave the property of his master, and also decreed that the work of his freed serfs should go to the exclusive benefit of the citizen. Natural law, and with far greater clarity, Christian law,

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[233] For a fuller discussion of this false theory of the contract of master and servant see J. F. Maxwell: "Should Christians Press for Revision of Company Law?" *University of Detroit Law Journal*, 40 (October 1962) 1, 42-51.

[234] *S. T.* I. II. Q. 105, a.2., ad 6.

do not allow this view of the worker as a slave nor as a bondsman graciously freed, but only as a free man . . .[235]

On June 7, 1912, Pope St. Pius X wrote a letter deploring the condition of persons of servile status in Brazil.[236]

The new Code of Canon Law for Western Catholics became effective on May 19, 1918. Existing Church law on the subject of slave-trading is as follows:

> A lay person who has been legitimately declared guilty of the crime of . . . selling a human being into slavery or for any other evil purpose . . . shall automatically be deprived of the right to legal ecclesiastical actions and of every position which he may have in the Church . . .
> If a cleric has committed [the above crime] . . . he shall be punished by the ecclesiastical court in proportion to his guilt with penances, censures, deprivation of office, benefice and dignity, and even with deposition, if the circumstances demand it . . . [237]

The natural vocational right to choice of work and recreation can be infringed not only by the slave-owner but also by any government which, though not claiming rights of slave-ownership, nevertheless imposes forced labour upon its subjects. The nature of this moral evil of forced labour therefore sheds light upon the nature of the moral evil of slavery which has this same effect. This question of forced labour in developing countries under colonial governments occupied the attention of the International Labour Office during the years between the two recent world wars.[238] Here is an extract from a memorandum which was submitted to the I.L.O.

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[235] Episcopal Conference of Colombia: "Instruction on Work" (1951), in *Conferencias Episcopales de Colombia, 1908-1953*, Bogotá, 1956, 216-217.

[236] Letter *Lacrimabili statu Indorum*. AAS. 4(1912), 521-525.

[237] *C. J. C.*, Canon 2354, §1 and §2.

[238] See the long and detailed documentation on forced labour in *La Documentation Catholique*, Vol. XXIV, 1930, cols. 81-115, 223-249, 387-433.

before its session in 1930 by a group of Catholic laymen:

> The natural law which imposes the obligation of work upon every man, leaves each person free, under his own individual and social responsibility, to choose the time, place and character of this work. Any form of positive obligation which, apart from certain urgent and exceptional needs, takes away from him this freedom and compels him under any sort of penalty to perform labour for which he has not, entirely of his own freewill, offered himself, and especially any labour which exceeds his strength and capacity, is therefore contrary to the natural law. It is for this fundamental reason that forced labour must in principle be anathematized and condemned.
>
> Due recognition must be given to the fact that there are exceptions to this condemnation: firstly, compulsory work which derives from military duties which are lawfully imposed on all the adult men of a community; secondly, certain forms of work which take the place of an equitable and moderate tax whose payment would naturally be obligatory; thirdly, work which would be the consequence of a penal conviction. But none of these exceptions should come to degenerate into a constraint which, as a result of an extension which would be an abuse, would finish by suppressing in practice the essential freedom of choice of work which the natural law recognizes as belonging to every human person.[239]

In spite of the teaching of *Rerum Novarum*, several modern Catholic moral theologians have continued to teach, right up to the middle of the twentieth century, the view that slavery as such (under due conditions and with proper safeguards) is not intrinsically morally wrong, supporting this view with the theory of the *dominium utile* of the slave-owner over the acts of the slave, and often referring to the legal titles (of Roman law) to slave-ownership.[240]

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[239] Union Catholique d'Etudes Internationales: "2nd Memorandum on Forced Labour", approved by several Catholic international and national associations. *La Documentation Catholique*, July 19, 1930, col. 103.

[240] *e.g.* A. Lehmkuhl S. J.: *Theol. Mor.* I. n.760, Friburg, 1893; D. M. Prümmer O.P.; *Man. Theol. Mor.* II, n.11, Barcelona, 1945; Merkelbach O.P.; *Sum. Theol. Mor.* II. 168, Paris, 1946; Aertnys-Damen C.SS.R.: *Theol. Mor.* I. n.652, 1950; Génicot — Salsmans — Gortebecke S.J.: *Instit. Theol. Mor.* I. n.467, Bruges, 1951; T. A. Jorio S.J.: *Theol. Mor.* II. n.539, Naples, 1954; M. Zalba S.J.: *Theol. Mor. Compend.* I. nn.1710-1711, Madrid, 1958.

If Adolf Hitler had decided to inquire from the Catholic authorities, between 1933 and 1945, whether the institution of slavery in labour camps for condemned criminals was morally legitimate, and whether it was morally right to enslave foreign non-Christian prisoners in just warfare and use them to work in German factories, there is regrettably little doubt that he would have received the reply that there was a "probable opinion" in the affirmative.

In Catholic countries the abolition of slavery has been due mainly to humanist influences. In 1945 the political philosopher Luigi Sturzo noted that the changes or corrections in ethical judgments concerning slavery, among so many Christian thinkers, did not precede but followed the social fact of its legal abolition. He considers that slavery is an institution opposed to the fundamental rights of the human person and an unjust exploitation of man by man, an unnatural institution, born of rapine and war, and kept in existence by human breeding and trade in human flesh. He regards the continuance of the slave-trade in modern times among Christian peoples ruled by "Catholic" kings as the blackest page in the history of the white race, and holds that it should be frankly condemned as wholly indefensible. He notes that before legal abolition became a *fait accompli*, it was assumed by theorists that abolition was impossible or would give rise to unacceptably serious consequences for society as a whole; but after abolition the ethical theorists began to say that one could prove the timeliness, reasonableness and moral obligation of the measures taken.[241]

In 1959 the Bishops of Upper Volta referred to slavery in a joint pastoral letter as follows:

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[241] "The Influence of Social Facts on Ethical Conceptions." *Thought* 20 (March 1945) 76 at 97-9.

> An economic system based on slavery, which makes a man into a mere instrument of production which is negotiable at the will of the owner who completely forgets the dignity of man, can never be acceptable to God. A man never has the right to reduce his brother to servitude, to make him his slave.[242]

Before the second Vatican Council Häring was teaching that slavery is always morally wrong since it deprives human beings of their right to human dignity, their right to the development of their personal capacities and their rights in regard to their work. And he interprets *Philemon*, v. 16, in this same sense. But he adds that the attempt in St. Paul's time to abolish slavery would have placed the human dignity of the slaves in even greater jeopardy.[243]

In 1965 the common Catholic teaching concerning slavery was officially corrected by the Second Vatican Council; its statements are quoted at the very beginning of this book. It will be noticed that there was no attempt to draw any distinctions concerning the titles of slave-ownership in Roman civil law. From this it may be assumed that slavery even as a penalty for crime is considered as morally unlawful, since it is a punishment which is inhuman and degrading.

In conclusion it should be noticed how very slender and scarce is the Catholic anti-slavery documentation since 1888 as compared with the very large volume of Catholic pro-slavery documentation right up to the time of the second Vatican Council.

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[242] "Le Chrétien dans la Cité." January 27, 1959. *La Documentation Catholique*, 1959, 632-3.
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A word of caution: a number of works on slavery by nineteenth century Catholic historians have been omitted. As mentioned in the text, (ix) 4 and (ix) 6, some Catholic historians during the period of anti-slavery controversy were pleading a case rather than writing history; consequently, some of their opinions may be unreliable; for example, any assertion that a given Catholic magisterial document is referring to serfdom, not slavery, needs to be checked from the text of the civil law in force at the time in the country concerned.

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